

W17a

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South Coast Region

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2210 Private Road  
Newport Beach, CA. 92660  
February 28, 2013

California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

CALIFORNIA  
COASTAL COMMISSION

Attn: Fernie Sy, Coastal Program Analyst II  
Re: W 17a - City of Newport Beach LCP Amendment No. NPB-MAJ-1-12 (Marina Park)

Dear Mr. Sy,

I was present at the CCC's hearing in Huntington Beach in June 2012 where the City of Newport Beach (CNB) spokesperson, Mr. Don Schmitz, indicated that one of the CNB's primary motivations for wanting to exceed the 35 foot shoreline height limitation with an architectural feature at Marina Park was to reduce visual blight by consolidating and beautifying existing over-height structures, in particular, relocating and disguising a nearby tsunami warning system tower. I am, therefore, grateful to have received your written notice of the CCC's March 6, 2013 hearing, and this opportunity to comment further on the matter.

My main concern is that if the Coastal Commission wishes to change the CNB CLUP to allow relocation of the tsunami warning system to a new tower at Marina Park, it needs to very explicit about that intention.

This is evident from the dialog which took place before the CNB City Council at their July 24, 2012 meeting, at which they were considering proposing the present change to the CLUP (a decision which later had to be re-ratified because the July 24, 2012 meeting had not been inadequately noticed). A video recording of that meeting is available at:

[http://newportbeach.granicus.com/MediaPlayer.php?view\\_id=44&clip\\_id=1594&meta\\_id=127833](http://newportbeach.granicus.com/MediaPlayer.php?view_id=44&clip_id=1594&meta_id=127833)

At 52 minutes 23 seconds into that recording, the following discussion regarding the significance of earlier CLUP modification language proposed by CCC staff will be found:

**CNB Planner Jim Campbell:** *I think by putting the "shall" in that statement about the communications or safety equipment I think what we're really committing to here is putting the tsunami warning siren into the tower. I think that's a decision, a discussion that...*

**CNB City Manager Dave Kiff (interrupting):** *Well, arguably we could put ANY communications equipment in there like a Wi-Fi for the building, correct? We're not really binding ourselves to that, and then if that's what their hope is it seems reasonable to me we'd have to obviously see if it can still spin around in there and make noise, but..*

**CNB Councilman Mike Henn:** *Well I guess my concern is: are we sure that's feasible .. to put the tsunami warning system inside this tower?*

**Kiff:** *Well we're NOT sure, but that's why I would propose you could go ahead and accept the "shall" language, and if they're OK with the vagueness of "screened emergency or communications equipment" and we don't say it's a tsunami warning system we can scope that out, but we could always put Wi-Fi or something in there.*

**Campbell:** *That's correct.*

It is evident to me that CNB does *not* feel the decorative tower is actually needed for communications equipment, or that the previously proposed CLUP modification language would bind them to using it in that way. And the language now being proposed on page 7 of the staff report seems to me to continue to leave that wiggle room. If the Commission's intent is to grant this modification to the CLUP primarily to allow a tasteful relocation of the tsunami warning tower to the new Marina Park buildings, then I believe much more explicit language is needed to ensure that the three objectives listed near the bottom of page 3 will be achieved.

Finally, if an over-height architectural feature *is* allowed at Marina Park, I like the suggestion to provide public viewing opportunities in it, but I find it a bit hard to picture how that function could be easily combined with the tsunami warning system, which I assume would require severe limitations on public access.

Yours sincerely,

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**CALIFORNIA COASTAL COMMISSION**

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February 21, 2013

**W 17a**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR  
TERESA HENRY, SOUTH COAST DISTRICT MANAGER  
KARL SCHWING, ORANGE COUNTY AREA SUPERVISOR  
FERNIE SY, COASTAL PROGRAM ANALYST II**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF NEWPORT BEACH  
LOCAL COASTAL PROGRAM (LCP) AMENDMENT NO. NPB-  
MAJ-1-12 (Marina Park) for Commission Meeting of March 6, 2013.**

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**SYNOPSIS****SUMMARY OF AMENDMENT REQUEST**

NPB-MAJ-1-12 is a request by the City of Newport Beach to amend the Certified Land Use Plan or Coastal Land Use Plan (CLUP). Only the Land Use Plan portion of the City's Local Coastal Program has been certified by the Commission. Coastal Land Use Plan (CLUP) Amendment No. 1-12 would amend Policy 4.4.2-1 to allow an exception to the Shoreline Height Limitation Zone at the Marina Park Project site (1600 West Balboa Boulevard) that was before the Commission at the June 2012 meeting. Currently, the height limit is 35-feet and the amendment would allow for a single, up to 73-foot tall "architectural tower".

**SUMMARY OF STAFF RECOMMENDATION**

Coastal Commission Staff is recommending that the Commission, after public hearing:

**DENY** the City of Newport Beach Coastal Land Use Plan Amendment 1-12, as submitted, and **APPROVE IT IF MODIFIED** as provided below.

As proposed, the Coastal Land Use Plan (CLUP) Amendment does not meet the requirements of and is not in conformity with the Chapter 3 policies of the Coastal Act. Only if modified as recommended will the Coastal Land Use Plan (CLUP) Amendment meet the requirements of and be in conformity with the Chapter 3 policies of the Coastal Act. **The motions to accomplish this recommendation are found on pages 6-7.**

The major issues raised by this amendment request are protection of the scenic and visual quality of the area, impacts to public views and consistency with the established community character. The proposed CLUP Amendment would allow the 35-foot height limit of the Shoreline Height Limitation Zone to be more than doubled, which would

adversely impact the scenic and visual qualities of the area and be inconsistent with the community character. These concerns are similar to the ones raised with the review of the Marina Park Coastal Development Permit application (CDP NO. 5-10-229), and still remain. In addition, the amendment would set a precedent for projects in the future to similarly exceed the height limit, resulting in significant cumulative adverse impacts to the scenic resources and prejudice the City's ability to prepare a certified LCP (the City only has a certified Land Use Plan and is currently working on the Implementation Plan).

In June 2012, the California Coastal Commission (CCC) approved the Marina Park Project (CDP NO. 5-10-229). The project consisted of construction of a new bayfront public park with a new 23 slip public marina through redevelopment of a 10.45 acre site, including a 23,832 square foot, 35-foot high multi-purpose and sailing program building; a 5,500 square foot Girl Scout building; 157-space public parking area; public park amenities including a new restroom with a 35-foot high lighthouse (non-functioning). The project also included a 71-foot high architectural design feature representing a lighthouse tower (non-functioning) that was attached to the proposed multi-purpose and sailing program building.

The height of that proposed 71-foot high lighthouse tower (non-functioning) architectural feature raised issues regarding consistency with the City's Certified Coastal Land Use Plan (CLUP) and impacts to public views and community character. The Certified CLUP contains a 35-foot height limit (Shoreline Height Limitation Zone), and most, if not all, buildings in the area comply. The proposed lighthouse tower was more than double the height limit. Therefore, approval of the 71-foot high lighthouse tower would have been inconsistent with community character, would set an adverse precedent for development in the area and would prejudice the City's ability to prepare a certifiable LCP. Thus in order to address these concerns, approval of the Marina Park Project included a special condition that required the proposed lighthouse tower be reduced to no higher than the CLUP maximum height of 35-feet, or to be eliminated from the project completely.

Also at that June 2012 CCC Hearing, the Commission found that the appropriate procedure for its review of the requested height limit increase was that the City should pursue this change through an amendment to Policy 4.4.2-1 of the Certified CLUP. Therefore, the City has submitted Coastal Land Use Plan (CLUP) Amendment No. 1-12 for approval of an exception to the 35-foot height limit. With this CLUP Amendment, the City has increased the height of the proposed exception from what was previously 71-feet (as shown in the tower element that was proposed with the Marina Park Project and subsequent discussion with the City after the June CCC Hearing) to now 73-feet. The City states that while the Marina Park Project submittal included a 71-foot tall lighthouse tower, actually a 73-foot tall lighthouse tower architectural feature was analyzed in the Marina Park Project EIR and they are now proceeding with a tower height of 73-feet. The City states that the additional height would provide flexibility to change the design. The City has abandoned the lighthouse design in the subject amendment request. The proposed CLUP Amendment does not require the 73-foot high "architectural tower" be of a lighthouse design despite the fact that the architectural tower that was analyzed in the EIR, shown to the Commission at the June 2012 hearing, and further analyzed by the City in a subsequent visual analysis in support of the subject amendment request was a tapered, see-through lighthouse design.

The City justifies a 73-foot tall architectural tower by stating that the Marina Park Project EIR already evaluated its impact on visual resources and community character and that the height is necessary to provide: a navigational element for watercraft; an closure for telecommunication and tsunami warning device equipment; a focal point; and an established iconic landmark for the Marina Park Project site and the City. However, Commission staff disagrees with the City's arguments since the EIR does not provide evidence that a 73-foot tall tower is consistent with the Chapter 3 scenic resources protection policies of the Coastal Act and the Certified CLUP. Additionally, the City failed to provide justification that the architectural tower needs to be as tall as 73-feet for navigational purposes and to house telecommunication and tsunami equipment since the approved tsunami equipment is only 54.25-feet high. Also, while the City states that the tower needs to be 73-feet in height to serve as a focal point and iconic feature, the City failed to demonstrate why a structure that conforms with the existing 35-foot Shoreline Height Limitation Zone cannot provide these functions. Commission staff notes that when the Marina Park project was first presented prior to the submittal of the Coastal Development Permit application, the proposed lighthouse tower element was only 50-feet in height. Therefore, the City has demonstrated that a much lower structure could serve as a focal point and iconic landmark for the site. Furthermore, a 35-foot high non-functioning lighthouse tower associated with the proposed restroom at the Marina Park Project was already approved by the Commission as a part of the June 2012 CDP application. This lighthouse tower feature could serve as the focal point and iconic landmark the City is seeking to establish at the site.

To support the proposed exception to the 35-foot height limit the City submitted a visual analysis indicating that there are six (6) buildings near the subject Marina Park site that exceed 35-feet. Those structures range in height from a 43-foot high tower at the Balboa Inn to an 81-foot high cupola at the Balboa Pavilion. However, Commission staff notes that four (4) of the six (6) structures were built prior to the Coastal Act and all six (6) of the structures were built prior to the 2005 adoption of the 35-foot height limit of the Shoreline Height Limitation Zone.

For these reasons, staff is recommending that the Commission deny the proposed CLUP Amendment as submitted and approve the amendment if it is modified to (1) allow a reduced height exception of up to 55-feet in order to allow a structure tall enough to house the Commission approved 54.25-foot high tsunami warning device; (2) to require that any such architectural element be required to be sited and designed to minimize adverse visual impacts, to include but not be limited to, the use of a tapered design with a maximum diameter of 34-feet at the base of the structure; and (3) that general public use of the architectural element be provided, as feasible.

## **DEADLINE FOR COMMISSION ACTION**

The subject Coastal Land Use Plan (CLUP) Amendment was submitted and filed as complete on November 14, 2013. A one-(1) year time extension was granted on January 11, 2013. As such, the last date for Commission action on this item is February 12, 2014.

### **ADDITIONAL INFORMATION**

For further information, please contact **Fernie Sy** at the South Coast District Office of the Coastal Commission at **(562) 590-5071**. The proposed amendment to the Certified Coastal Land Use Plan of the City of Newport Beach Local Coastal Program is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. **Patrick Alford** is the contact person for the City's Planning Division, and he may be reached by calling **(949) 644-3200**.

### **EXHIBITS**

1. City of Newport Beach Planning Commission Resolution No. 1889
2. City of Newport Beach City Council Resolution No. 2012-80
3. Shoreline Height Limitation Zone Map/Marina Park Project Site Map
4. Ex Parte Communication Form

## **PART I. OVERVIEW**

### **A. LOCAL COASTAL PROGRAM (LCP) HISTORY**

The Certified Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982, and subsequently amended multiple times. Most recently, the Certified CLUP was updated on November 2012.

The current CLUP Amendment request was submitted by the City of Newport Beach on September 24, 2012 to the South Coast District Office. Additional information was requested by Coastal Commission staff on October 5, 2012. On October 10, 2012, the City submitted information in response to the request by Coastal Commission staff. However, Coastal Commission staff again asked for previously requested information on October 24, 2012. City staff subsequently submitted all the requested information on November 14, 2012 and on that date Coastal Commission staff determined that the amendment request was complete. A one-(1) year time extension to extend the ninety (90)-day time limit for the Certified CLUP to be scheduled for a public hearing and have the Coastal Commission take action was granted on January 11, 2013 that extended the time limit to February 12, 2014.

### **B. STANDARD OF REVIEW**

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify a CLUP Amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: “(c) *The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.*”

### **C. PUBLIC PARTICIPATION**

The City of Newport Beach Planning Commission held public hearing for the proposed Coastal Land Use Plan (CLUP) Amendment on June 23, 2012, which approved Planning Commission Resolution No. 1889 (Exhibit #1), and the City of Newport Beach City Council held public hearings for the proposed Coastal Land Use Plan (CLUP) Amendment on July 23, 2012 and September 11, 2012, which approved City Council Resolution No. 2012-80 (Exhibit #2).

The applicants and members of the public made comments at the public hearings for each of the actions.

## **PART II. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH COASTAL LAND USE PLAN (CLUP) AMENDMENT 1-12**

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

### **A. DENIAL OF THE COASTAL LAND USE PLAN (CLUP) AMENDMENT AS SUBMITTED**

#### **MOTION:**

*“I move that the Commission certify Coastal Land Use Plan (CLUP) Amendment No. 1-12 for the City of Newport Beach as submitted.”*

#### **STAFF RECOMMENDATION TO DENY:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Coastal Land Use Plan (CLUP) Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

#### **RESOLUTION TO DENY:**

The Commission hereby denies certification of the Coastal Land Use Plan (CLUP) Amendment No. 1-12 as submitted by the City of Newport Beach and adopts the findings set forth below on the grounds that the amendment does not meet the requirements of or conform with the policies of Chapter 3 of the Coastal Act. Certification of the Coastal Land Use Plan (CLUP) Amendment would not comply with the California Environmental Quality Act (CEQA) because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Coastal Land Use Plan (CLUP) Amendment may have on the environment.

### **B. APPROVAL OF THE COASTAL LAND USE PLAN (CLUP) AMENDMENT WITH SUGGESTED MODIFICATIONS**

#### **MOTION:**

*“I move that the Commission certify Coastal Land Use Plan (CLUP) Amendment No. 1-12 for the City Newport Beach if it is modified as suggested by staff.”*

#### **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the Coastal Land Use Plan (CLUP) Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested



modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

**RESOLUTION TO CERTIFY THE COASTAL LAND USE PLAN (CLUP) WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Coastal Land Use Plan (CLUP) Amendment No. 1-12 for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Coastal Land Use Plan (CLUP) Amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Coastal Land Use Plan (CLUP) Amendment if modified as suggested complies with the California Environmental Quality Act (CEQA) because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Coastal Land Use Plan (CLUP) Amendment may have on the environment.

**PART III. SUGGESTED MODIFICATIONS ON CITY OF NEWPORT BEACH COASTAL LAND USE PLAN (CLUP) AMENDMENT 1-12**

Certification of City of Newport Beach Coastal Land Use Plan (CLUP) Amendment Request No. 1-12 is subject to the following modifications.

Language as submitted by the City of Dana Point is shown in straight type.

The Commission's suggested additions are shown in ***bold, italic, underlined text***.

The Commission's suggested deletions are shown in Strike Out.

**SUGGESTED MODIFICATIONS TO THE COASTAL LAND USE PLAN (CLUP)**

- 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following site.

Marina Park located at 1600 West Balboa Boulevard: A single, up to 73 ~~55~~-foot –tall architectural tower that ***creates an iconic landmark for the public to identify the site from land and water may be allowed.*** ~~does not include floor area but shall house screened communications or emergency equipment, and creates an iconic landmark for the public to identify the site from land and water.~~ ***Any architectural tower that exceeds the 35-foot height limitation shall not include floor area above the 35-foot height limit but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by, among other things, incorporating a tapered design with a maximum diameter of 34-feet at the base of the tower. Public viewing opportunities shall be provided above 35-feet, as feasible.***

## **PART IV. FINDINGS FOR DENIAL OF COASTAL LAND USE PLAN (CLUP) AMENDMENT DESCRIPTION AS SUBMITTED AND APPROVAL OF COASTAL LAND USE PLAN (CLUP) AMENDMENT AS MODIFIED**

The Commission hereby finds and declares as follows. The following pages contain the specific findings for denial of the City of Newport Beach Coastal Land Use Plan Amendment NPB-MAJ-1-12 as submitted.

### **A. AMENDMENT DESCRIPTION**

Coastal Land Use Plan (CLUP) Amendment No. 1-12 is a project-specific request and would amend Policy 4.4.2-1 to include an exception to the Shoreline Height Limitation Zone to allow an architectural tower feature at Marina Park (1600 West Balboa Boulevard). Currently, the height limit is 35-feet and the amendment would allow for a single, up to 73-foot tall “architectural tower”. Although throughout the review of the Marina Park CDP application and the subject CLUP Amendment the City has indicated and shown graphically an architectural tower designed as a non-functioning lighthouse, the proposed amendment does not require the structure to be designed as a lighthouse. The City’s proposed change to this policy is shown in underlined italic below:

4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following site.

Marina Park located at 1600 West Balboa Boulevard: A single, up to 73-foot –tall architectural tower that does not include floor area but shall house screened communications or emergency equipment, and creates an iconic landmark for the public to identify the site from land and water.

The Shoreline Height Limitation Zone was adopted by the City in the early 1970’s to regulate and control development pressures within the harbor area. The Shoreline Height Limitation Zone (including Policy 4.4.2-1) was adopted into the City’s Certified CLUP in 2005 to regulate and control development within the harbor area and to reduce impacts to public views. The Shoreline Height Limitation Zone includes West Newport, areas surrounding the harbor, and it extends inland to the Back Bay (Exhibit #3). The proposed CLUP Amendment specifically addresses only one site within the Shoreline Height Limitation Zone, Marina Park.

The affected amendment site, Marina Park, is located on the Balboa Peninsula in the City of Newport Beach on approximately 10.45 acres of land that is located between Balboa Boulevard on the south, sandy beach area and Newport Bay (Lower) on the north, 15<sup>th</sup> Street on the east and 19<sup>th</sup> Street on the west. The site is designated PR for Parks and Recreation according to the City’s Certified Coastal Land Use Plan (CLUP). The site

also includes the sandy beach area and Newport Bay (Lower) north of the project site (Exhibit #3).

The subject site currently contains the Marina Park Mobile Home Park (with fifty-seven (57) Mobile homes and fifteen (15) full time residents), a public beach, the Las Arenas Park; the 4,710 square foot Balboa Community Center; the 3,900 square foot Girl Scouts House; four (4) tennis courts; a half basketball court, public parking lots and the 19<sup>th</sup> Street public restroom.

In June 2012, the California Coastal Commission (CCC) approved the Marina Park Project (CDP NO. 5-10-229), which consisted of the construction of a new bayfront public park with a new public marina on 10.45 acres of land, including removal of a mobile home park, various community buildings and recreational facilities, and construction of a 23,832 square foot, 35-foot high multi-purpose and sailing program building; a 5,500 square foot Girl Scout building; 157-space public parking area; public park amenities including a new restroom with a 35-foot high lighthouse (non-functioning); a new public marina (including bulkhead and groin) consisting of 23 slips and 200-foot long side tie area, to be partly excavated from dry land (total 68,000 cubic yards.); and a tentative parcel map to combine 35 lots into 4 lots. The project also included a 71-foot high architectural design feature representing a lighthouse tower (non-functioning) that was attached to the proposed multi-purpose and sailing program building. However, since the 71-foot high lighthouse tower was inconsistent with the 35-foot maximum height of the Shoreline Height Limitation Zone, a Special Condition was imposed that required it to be reduced in height to be consistent with the Shoreline Height Limitation Zone requirements. This special condition also resulted in making the tower consistent with the community character and avoided significant adverse impacts to scenic resources (to be further discussed later in the staff report).

## **B. DENIAL OF THE COASTAL LAND USE PLAN (CLUP) AMENDMENT AS SUBMITTED**

The proposed CLUP Amendment No. 1-12, would amend Policy 4.4.2-1 to include an exception to the Shoreline Height Limitation Zone. The standard of review for the proposed amendment to the CLUP, pursuant to Sections 30512 of the Coastal Act, is conformance the Chapter 3 policies of the Coastal Act. As stated previously, this amendment would allow at the Marina Park location, a 73-foot tall architectural tower at a height that is inconsistent with Policy 4.4.2-1 that requires a 35-foot height limitation in the Shoreline Height Limitation Zone. The proposed CLUP Amendment is not in conformance with the Chapter 3 policies of the Coastal Act, specifically Section 30251 of the Coastal Act that requires that the scenic and visual qualities of coastal areas be protected and that new development be visually compatible with the character of the surrounding area. Similarly, the CLUP Amendment is also inconsistent with the policies of the City's Certified Coastal Land Use Plan that aim to maintain the character and visual scale of the City. At the subject site, the character of the surrounding area is defined by a 35-foot height limit. Applicable provisions found in Chapter 3 of the Coastal Act include the following:

Section 30251 of the Coastal Act states, in relevant part:

*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...*

City Coastal Land Use Plan, Bulk and Height Limitation, Policy 4.4.2-1 states,

*Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3.*

The subject site is located in the Shoreline Height Limitation Zone.

City Coastal Land Use Plan, Bulk and Height Limitation, Policy 4.4.2-2 states,

*Continue to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.*

The proposed CLUP Amendment, which would allow for the approval of a structure more than double the existing height limit without any design parameters to minimize and mitigate adverse visual impacts, will have a significant adverse cumulative affect on scenic resource of the City and is inconsistent with the scenic resources protection policy found in Chapter 3 of the Coastal Act. The proposed LCP amendment also does not maintain community character, would set an adverse precedent for development in the area and would prejudice the City's ability to prepare a certifiable LCP. The following discussion below explains how the proposed CLUP Amendment is not consistent with the Chapter 3 policies of the Coastal Act protecting scenic resources.

### **Scenic Resources**

The proposed CLUP Amendment is inconsistent with the Chapter 3 policies of the Coastal Act and the City's Certified Coastal Land Use Plan and would result in adverse impacts to visual resources and inconsistency with the community character, set an adverse precedent for development in the area and prejudice the City's ability to prepare a certifiable LCP. However, the City of Newport Beach finds that the proposed CLUP Amendment would not result in adverse impacts to scenic resources and has provided their reasons why 73-feet is necessary for an architectural tower feature.

With this CLUP Amendment, the City has increased the height of the exception from what was previously 71-feet (as shown in the tower element that was proposed with the Marina Park Project heard at the June 2012 CCC Hearing and identified in subsequent discussions after that hearing) to now 73-feet. The City justifies this change by stating that the Marina Park Project EIR actually analyzed a 73-foot tall lighthouse tower architectural feature and that this additional height would give them flexibility to change

the design. The City has apparently abandoned the lighthouse design since the proposed Amendment would not require such design even though the structure proposed throughout the EIR and CDP process and the subsequent visual analysis submitted in support of this amendment was a non-functioning lighthouse. Thus, the submitted CLUP Amendment is to allow an exception to the 35-foot height limit established in the Shoreline Limitation Zone. The exception would allow a 73-foot tall “architectural tower” at the Marina Park Project site without any design parameters or requirement that the structure protect the scenic qualities of the area.

The City states an analysis regarding the proposed 73-foot tall tower architectural feature was conducted in the Marina Park Project EIR (provided in Section 5.1 (Aesthetics) and Appendix B (Visual Simulations). Section 5.1 of the EIR describes the existing aesthetics and potential effects of the Marina Park Project on the aesthetic character of the area. The descriptions and analyses provided were based on information contained in the visual simulations provided in Appendix B, as well as site visits by the City’s EIR consultants. The analysis covers consistency with applicable policies and regulations, impacts to scenic vistas and the visual character of the area, and light and glare impacts. Within the EIR, it also states that a 73-foot tall lighthouse tower architectural feature is necessary in order to provide a navigation element for watercraft for new visitors, as well as to draw the public into the new adjacent public park. The analysis concluded that the lighthouse tower architectural feature would be in conformance with the Coastal Act and the CLUP. While the EIR does state that the project would have a less than significant impact on the visual character of the surrounding area since the Marina Park Project would open up significant views to the bay in contrast to the visual impact caused by the lighthouse tower architectural feature, it does acknowledge that the tower’s 73-foot anticipated height would be in contrast with the remainder of the site and surrounding structures. Thus, the EIR does acknowledge the inconsistency of the anticipated tower height with the community character. Furthermore, the analysis found in the EIR is inadequate as it does not evaluate the area to show how the proposed height of the tower is compatible with the surrounding area nor does it provide substantial evidence on why the tower needs to be 73-feet high. Finally, the EIR fails to provide supporting evidence regarding the City’s claims that the 73-foot anticipated height is necessary to serve as a critical element of the Marina Park Project by facilitating navigation for watercraft.

However, the City specifies that the tower would be used to house screened telecommunications or emergency equipment (i.e., telecommunications and tsunami warning siren) and that enclosing such equipment in the architectural tower feature would reduce the need for erecting freestanding structures and thereby further reducing visual clutter in the Coastal Zone. While reducing visual clutter in the Coastal Zone would enhance visual resources, the City fails to provide justification that such an excessive height is necessary for tsunami and telecommunication equipment. The City has stated that the existing tsunami warning device system located on a pole with a maximum height of 54.25-feet located adjacent to Marina Park at Veteran’s Park could be co-located within the 73-foot tall architectural tower. That device, along with two (2) others in other areas within the City and within the Shoreline Height Limitation Zone, was approved under CDP No. 5-09-141 at the January 2010 Commission hearing. The staff report does acknowledge that these poles would exceed the 35-foot height limit. However, the applicant (The City of Newport Beach) provided sufficient evidence to justify the 54.25-foot height, which is necessary in order for the tsunami warning device

to work effectively. For example, the City provided information from the Occupational Safety and Health Administration (OSHA) regarding impacts to hearing resulting from a pole at a reduced height of 35-feet, which would have been consistent with the Shoreline Height Limitation Zone. In addition, the City provided information showing that if the poles were to be reduced in height to 35-feet, that eighteen (18) poles would be needed to accomplish the work of the three (3) poles at a maximum height of 54.25-feet.

Continued adverse visual impacts associated with the tsunami warning device that exceeded the 35-foot height limit existed despite the provided information that required it to be 55-feet to work effectively and thus, additional mitigation measures were necessary to reduce those remaining adverse visual impacts. Thus, the City justified the necessary height increase for the tsunami warning device as opposed to the lack of information the City has provided in order to justify the need for the architectural tower to be at 73-feet to potentially incorporate telecommunication or emergency equipment. Based on the information the City has provided in CDP NO. 5-09-141, the tsunami warning device needs to only rise in height to a maximum of 54.25-feet. Thus applying these findings to the current CLUP Amendment, the tower element would only need to rise to a maximum height of 54.25-feet in order for it to work effectively as a tsunami warning device with the necessary equipment enclosed in the lighthouse tower.

Another justification by the City for the height of the tower is that they say it provides a focal point for the area that would enhance the scenic quality of the area and not detract from it. The City defines focal point as an element in the landscape that stands out because of its contrasting shape, line, color, or pattern. Also, the City states that the 73-foot tall lighthouse tower architectural feature is necessary since it will create an iconic landmark for the public to identify the site from land and water that reflects the City's history and culture. The City sites other locations within the City, such as Balboa Village with the Balboa Pavilion and its cupola and the Balboa Inn with its tower that distinguishes the beachside of Balboa Village, and state that an iconic feature is also necessary for the Marina Park Project site. However, the 73-foot tall architectural tower can be redesigned and lowered in order to create a focal point that would be consistent with Policy 4.4.2-1 and serve also as an iconic feature. When the Marina Park project was first discussed with Commission staff prior to the submittal of the coastal development permit application, the City indicated that the then proposed lighthouse tower element would be at 50-feet in height. Therefore, the City demonstrated at that time that a 50-foot high structure could serve as a focal point and iconic landmark for the site.

Additionally, the Marina Park project already incorporates a non-functioning lighthouse tower architectural element that has been designed to look like an actual lighthouse that is consistent with the 35-foot height limit of the Shoreline Height Limitation Zone. This structure is located within the children's play area and houses a restroom facility. This freestanding 35-foot lighthouse tower can serve as the focal point for the Marina Park Project and at the same time could be the iconic landmark reflecting the City's history and culture. Additionally, this 35-foot lighthouse tower would be designed to resemble a traditional lighthouse, instead of the previously proposed modernized 73-foot tall lighthouse tower architectural feature attached to a building.

However, the proposed CLUP Amendment no longer proposes that the 73-foot high architectural tower be designed as a lighthouse feature although the EIR, the Marina Park

Coastal Development Permit application that was before the Commission in June 2012 and the subsequent visual analysis submitted to staff in support of the subject amendment request. Further, the subject amendment request does not provide any design parameters for the tower, nor require that the ultimate design reflect the City's history and culture, or that the structure be sited and designed to minimize adverse visual impacts.

In order to further address the question of consistency with the community character, the City submitted a recent visual analysis. The City states that this analysis supports the conclusion of the EIR that the project will not substantially degrade the existing visual character or quality of the site and its surroundings. The visual analysis analyzed views of the previously proposed 73-foot tall lighthouse architectural tower from different locations within the City near the Marina Park Project site. These locations were from the 19<sup>th</sup> Street Beach/Public Restroom, Lido Isle Bridge, Kings Road Overlook, Pacific Coast Highway, Bay Bridge, Newport Bay, Veteran's Memorial Park and Sunset Ridge Park.

The City states that this analysis shows that the lighthouse tower is compatible with the community character because it is consistent with the other vertical elements near the Marina Park Project site, such as palm trees, boat masts and boat cranes. However, palm trees and boats can be easily removed or moved so as not to remain in the same location and are not as massive, as opposed to a 73-foot tall lighthouse tower architectural feature. The permanence and massiveness of the lighthouse tower is not similar to the slender trunks of palm trees or the size of boat masts and cranes, so as while the height of the lighthouse tower may be similar to the height of palm trees and boat masts in the bay, the lighthouse tower will distinctly stand out from these other vertical elements and create an inconsistency with character of the surrounding area.

Additionally, the City also states that this analysis shows that the lighthouse tower is compatible with the community character because it is consistent with other buildings (i.e., bell towers, cupolas, etc.)/vertical elements near the Marina Park Project site. More specifically, the City identifies existing buildings near the Marina Park Project site within the Shoreline Height Limitation Zone that exceed the 35-foot height limitation:

- 1) The Balbo Inn Tower (105 Main Street) which is approximately 43-feet high. It was constructed in 1929 and is approximately 1.34 miles east from the Marina Park Project site.
- 2) The Balboa Pavilion Cupola (400 Main Street) which is approximately 81-feet high. It was constructed in 1905 and is approximately 1.37 miles east from the Marina Park Project site.
- 3) The Our Lady of Mount Carmel Church Bell Tower (1441 West Balboa Boulevard) which is approximately 62-feet high (70-feet to the top of the Cross). It was constructed in 1923 and is approximately .13 miles (677-feet) southeast from the Marina Park Project site.
- 4) The Newport Elementary Cupola (1327 West Balboa Boulevard) which is approximately 48-feet high. It was constructed in 1935 and is approximately .20 miles (1,039-feet) southeast from the Marina Park Project site.

- 5) The Newport Lifeguard Tower which is approximately 60-feet high. It was most likely approved by the Commission in 1976 and is approximately .41 miles (2,150-feet) southwest from the Marina Park Project site.
- 6) The Balboa Bay Club and Resort Towers (1221 West Coast Highway) which are approximately 57-feet high. It was approved by the Commission in 1995 and is approximately .63 miles (2,150-feet) north from the Marina Park Project site.

It must be noted that all these buildings were constructed prior to the adoption of the Shoreline Height Limitation Zone in 2005. Thus, these buildings were constructed prior to requirement that they be limited to a height of 35-feet and four (4) of the six (6) structures are pre-Coastal Act. Therefore, these structures cannot be used to justify a 73-foot tall architectural tower. The previously discussed tsunami warning device system was proposed after the adoption of the Shoreline Height Limitation Zone 35-foot height requirement and thus was required to adhere to that policy. While the tsunami warning device was allowed to exceed the 35-foot height limitation, it was approved after providing justification for the proposed 54.25-foot maximum height. This is not the case concerning the proposed amendment to allow a 73-foot tall architectural tower. The City failed to provide justification on the necessity to construct a tower at such excessive height.

Approving an amendment to the CLUP to allow such an excessively tall structure would set an adverse precedent for development in the area. If approved, numerous other similar projects may arise that would result in additional adverse impact visual resources. For example, the City of Newport Beach is currently preparing an additional CLUP Amendment that would affect the former City Hall site. An Initial Study/Negative Declaration for the City of Newport Beach City Hall Reuse Project has been prepared for that site which is further upcoast of the subject Marina Park site, but still within the Shoreline Height Limitation Zone that limits development to 35-feet in height. The Negative Declaration states that a CLUP Amendment would be needed to allow buildings on the former City Hall site to be constructed up to 55-feet in height and up to a maximum of 65-feet for architectural elements. Therefore, approval of an amendment to the CLUP to allow a 73-foot tall tower would set an adverse precedent for future development in the area and would prejudice the City's ability to prepare a certifiable LCP, as the City currently lacks a Certified Implementation Plan (IP). Approving this CLUP Amendment to allow a structure to exceed the height limit by more than double, without justification for this excessive height, and without any design parameters or requirement that the structure be sited and designed to minimize and mitigate adverse visual impacts can result in future development requesting similar exceptions to the height limit, resulting in significant adverse cumulative impacts to scenic resources. Additionally, approving this CLUP Amendment as proposed would prejudice certification of the IP in a manner that preserves the existing community character as it would set the stage for approval of other development that exceed the established height limit and resulting in development that is inconsistent with community character and scale.



## **Conclusion**

Therefore, the Commission finds that the proposed Amendment must be denied as submitted due to its inconsistency with the visual resources protection policies of the Coastal Act and its prejudice to the certification of the LUP. Only if modified as suggested to require changes to the CLUP Amendment to reduce the height of any future structure to that necessary to house emergency equipment, to require that it be designed and sited to minimize adverse visual impacts, and provide public viewing opportunities, as feasible, can the CLUP be found consistent with the Chapter 3 policies of the Coastal Act.

### **C. APPROVAL OF THE COASTAL LAND USE PLAN (CLUP) AMENDMENT, AS MODIFIED**

The findings for denial of the CLUP Amendment as submitted are herein fully incorporated.

## **Scenic Resources**

As stated previously, the Coastal Act requires that scenic and visual qualities of coastal areas be protected. Thus, the height of the proposed 73-foot architectural tower must be reduced in order for it to avoid adversely impacting the scenic and visual resources of the coastal area and to make it compatible with the community character. One of the City's arguments in requiring that the architectural tower be 73-feet tall is that it is necessary to function as a tsunami warning device, a use that the City states could be incorporated into the architectural tower. As stated previously, there is an existing adjacent Commission approved tsunami warning device in Veteran's Park that the City says can potentially be folded into the architectural tower. This existing tsunami warning device was approved to be a maximum height of 54.25-feet. While it does exceed the 35-foot height restriction of the Shoreline Height Limitation Zone, it was approved only after the City provided justification on why that height is necessary. Thus applying this to the current CLUP Amendment, the architectural tower element would only need to rise to a maximum height of 54.25-feet in order work effectively as a tsunami warning device with the necessary equipment enclosed in the lighthouse tower. Doing so would allow the tower to function as a tsunami warning device system as the City requests. Therefore, a maximum height of 55-feet will allow flexibility in accommodating the emergency equipment.

Allowing an architectural tower to be 55-feet tall would allow it to exceed the height limit of 35-feet in the Shoreline Height Limitation Zone, but it would do so to function properly as a tsunami warning device and would also be designed to be compatible with existing development in the area if it is sited and designed as suggested, in a manner that would minimize adverse visual impacts by being tapered and with a maximum base diameter of 34-feet and provide public viewing opportunities, as feasible to mitigate remaining adverse visual impacts of a structure that exceeds that the 35-foot height limit, which is the predominant height of the area. The specific design parameters previously indicated have been added to achieve an architectural tower design that minimizes

adverse visual impacts. The City has demonstrated that an architectural tower can be built with a diameter of 34-feet. While most if not all development in the area is at 35-feet in height, there are other structures that do rise above 35-feet, i.e., Balboa Pavilion Cupola, Newport Pier Lifeguard Tower, etc. While exceeding the 35-foot Shoreline Height Limitation Zone height limit, these other structures do not rise to an excessive height of more than double the height limit at 73-feet. Thus, limiting the height to 55-feet would result in an architectural feature that is more compatible with the surrounding area.

### **Conclusion**

Therefore, the Commission finds that only if modified as suggested to require changes to the CLUP Amendment regarding 55-foot maximum height of the architectural tower and clarification that the structure will be sited and designed to minimize its visual impacts through a tapered design with a maximum diameter of 34-feet and provide public viewing opportunities, as feasible can the CLUP be found consistent with the Chapter 3 policies of the Coastal Act.

## **PART V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a Local Coastal Program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, the Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an Environmental Impact Report for each Local Coastal Program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a Local Coastal Program to find that the Local Coastal Program does conform to the provisions of CEQA.

Coastal Land Use Plan (CLUP) Amendment No. 1-12 would amend Policy 4.4.2-1 to include an exception to the Shoreline Height Limitation Zone to allow an architectural tower feature at Marina Park (1600 West Balboa Boulevard). Currently, the height limit is 35-feet and the amendment would allow for a single, up to 73-foot tall lighthouse tower architectural feature.

As outlined in this staff report, the proposed CLUP Amendment is inconsistent with the Chapter 3 policies of the Coastal Act. However, if modified as suggested, the CLUP Amendment will be consistent with the Chapter 3 policies of the Coastal Act. Thus, the Commission finds that the LUP Amendment, if modified as suggested, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the CLUP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies CLUP Amendment request 1-12 if modified as suggested herein.

OCT 11 2012

**RESOLUTION NO. 1889**

**CALIFORNIA  
COASTAL COMMISSION**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO  
THE CITY COUNCIL OF AN AMENDMENT TO THE COASTAL  
LAND USE PLAN TO MODIFY POLICY NO. 4.4.2-1 TO ALLOW  
AN ARCHITECTURAL TOWER AT 1600 W. BALBOA  
BOULEVARD (PA2012-079)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Between 2007 and 2009, working with residents, the citizen group Protect our Parks, the Harbor Commission and the 9-member Council/Citizens Advisory Committee, the City developed the plan to replace the current mobile home park between 18th Street and 15th Street along West Balboa Boulevard with a visitor-serving use.
2. The Marina Park Committee was formed to oversee the design of the project and advise the Council regarding the community and stakeholder interests. The Marina Park Committee conducted fourteen public meetings between 2009 and 2011.
3. In March 2009, the City Council approved the concept plan for a visitor-serving marina, a community building, a sailing center building that included a 71-foot high architectural tower, a new Girl Scout meeting house, parking, a tot play area, restrooms, and lots of open grassy space for picnicking.
4. The Marina Park Project Environmental Impact Report (EIR) (SCH # 2008051096) was certified to the City Council in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3 on May 11, 2010.
5. The project was submitted for approval and permitting by the California Coastal Commission and was conditionally approved on June 13, 2012. Approval was conditioned to reduce the height of the architectural tower to 35-feet.
6. In accordance with California Code of Regulations, Section 13515[c], notice of availability of the proposed amendment to the Coastal Land Use Plan was mailed to: 1) members of the public requesting such notices; 2) contiguous and affected local governments; 3) various regional, state and federal agencies, and 4) local libraries and media.

7. A public hearing was held on July 5, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Marina Park Project Environmental Impact Report (EIR) (SCH # 2008051096) was certified to the City Council in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3 on May 11, 2010.
2. The 73-foot high tower element was included in the project description analyzed in the EIR which concluded that the potential impact of the project on public views and access would be less than significant. Therefore, the EIR concluded that the project, including the tower element, was consistent with the goals and policies of the Coastal Land Use Plan and the California Coastal Act.

## SECTION 3. FINDINGS.

1. Amendments to the Coastal Land Use Plan are a legislative act. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. The amendment of the Coastal Land Use Plan will allow for a tower feature to be incorporated into the previously approved Marina Park Project. The tower, which will depict a lighthouse, is considered a critical feature of the project in that it provides an iconic element of a public facility and will assist in wayfinding for the public from land and water.
3. The analysis of the proposed project and architectural tower element demonstrate no impacts to designated public view sheds or public access. The project analysis demonstrated the project, including the 73-foot tower element, would be in compliance with the California Coastal Act. In that the subject amendment would only allow a tower element on the subject site, the amendment is also consistent with the Coastal Act.
4. The proposed amendment to the Coastal Land Use Plan shall take effect upon approval from the California Coastal Commission. Unless modifications to the original amendment are required as a result the Coastal Commission's approval, no further action will be required of the City Council.



SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach hereby recommends City Council approval of Coastal Land Use Plan Amendment LC2012-002, modifying Policy No. 4.4.2-1 to read as follows (changes are underlined):

- 4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following site.

Marina Park located at 1600 W. Balboa Boulevard: A single, up to 73-foot tall architectural tower that does not include floor area but could house screened communications or emergency equipment. The additional height would create an iconic landmark for the public to identify the site from land and water and a visual focal point to enhance public views from surrounding vantages.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF JULY, 2012.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker

NOES: None.

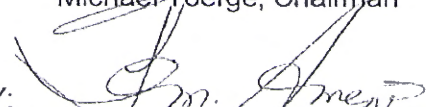
ABSTAIN: None.

ABSENT: None.

BY:

  
Michael Toerge, Chairman

BY:

  
Fred Ameri, Secretary

SEP 24 2012

CALIFORNIA  
COASTAL COMMISSION

**RESOLUTION NO. 2012-80**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWPORT BEACH APPROVING COASTAL LAND USE PLAN  
AMENDMENT NO. LC2012-002, MODIFYING POLICY 4.4.2-1 TO  
ALLOW AN ARCHITECTURAL TOWER AT 1600 WEST  
BALBOA BOULEVARD AND RESCINDING RESOLUTION  
NO. 2012-66 (PA2012-079)**

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. Between 2007 and 2009, working with residents, the citizen group Protect our Parks, the Harbor Commission, and a 9-member Council/Citizens Advisory Committee, the City developed the plan to replace the current mobile home park between 18th Street and 15th Street along West Balboa Boulevard with a visitor-serving use.
2. The Marina Park Committee was appointed by the City Council to oversee the design of the project and advise the City Council on the community and stakeholder interests. The Marina Park Committee conducted fourteen public meetings between 2009 and 2011.
3. In March 2009, the City Council approved the concept plan for a visitor-serving marina, a community building, a sailing center building that included a 71-foot-high architectural tower, a new Girl Scout meeting house, parking, a tot play area, restrooms, and lots of open grassy space for picnicking.
4. The Marina Park Project Environmental Impact Report (EIR) (SCH # 2008051096) was certified to the City Council in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3 on May 11, 2010.
5. The project was submitted for approval and permitting by the California Coastal Commission, and was conditionally approved on June 13, 2012. Approval was conditioned to reduce the height of the architectural tower to 35 feet. In June 2012, the California Coastal Commission approved the Marina Park project, but limited the tower feature on the Sailing Center Building to 35 feet. The Coastal Commission based this action on the interpretation that the tower feature did not comply with Coastal Land Use Plan Policy 4.4.2-1, which reflects the 35-foot height limit of the City's Shoreline Height Limitation Zone.
6. Comments from some California Coastal Commission members and staff indicated support for an Coastal Land Use Plan amendment if it were limited to the Marina Park project so as not set a precedent for future increases in height.
7. In accordance with Title 14 of the California Code of Regulations, Section 13515, on June 23, 2012, a notice of availability of the proposed amendment to the Coastal Land Use Plan was mailed to: 1) members of the public requesting such notices; 2)

contiguous and affected local governments; 3) various regional, state, and federal agencies, and 4) local libraries and media.

8. The Planning Commission conducted a public hearing on July 5, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting. At the conclusion of the hearing, the Planning Commission adopted Planning Commission Resolution No. 1889 recommending adoption of Coastal Land Use Plan Amendment No. LC2012-002.
9. The City Council held public hearings on July 24, 2012, and September 11, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. Notices of time, place and purpose of these meetings were given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at these meetings.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Marina Park Project Environmental Impact Report (EIR) (SCH # 2008051096) was certified to the City Council in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3 on May 11, 2010.
2. The 73-foot-high tower element was included in the project description analyzed in the EIR which concluded that the potential impact of the project on public views and access would be less than significant. Therefore, the EIR concluded that the project, including the tower element, was consistent with the goals and policies of the Coastal Land Use Plan and the California Coastal Act.

## SECTION 3. FINDINGS.

1. Amendments to the Coastal Land Use Plan are a legislative act. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. The second public hearing, held on September 11, 2012, was necessary to comply with Title 14, Section 13515 of California Code of Regulations, which requires a minimum of six weeks between the issuance of the notice of availability for a coastal land use plan amendment and final action by the City.
3. The amendment of the City's Coastal Land Use Plan will allow for a tower feature to be incorporated into the previously approved Marina Park Project. The tower, which will depict a lighthouse, is considered a critical feature of the project in that it provides an iconic element of a public facility and will assist in wayfinding for the public from land and water.

4. The analysis of the proposed project and architectural tower element demonstrate no impacts to designated public view sheds or public access. The project analysis demonstrated the project, including the 73-foot tower element, would be in compliance with the California Coastal Act. In that the subject amendment would only allow a tower element on the subject site, the amendment is also consistent with the Coastal Act.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

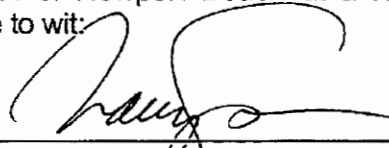
1. Resolution No. 2012-66 is hereby rescinded.
2. The City Council of the City of Newport Beach hereby approves of Coastal Land Use Plan Amendment No. LC2012-002, modifying Policy No. 4.4.2-1 to read as follows (changes are underlined):

**4.4.2-1.** Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3, except for the following site.

Marina Park located at 1600 West Balboa Boulevard: A single, up to 73-footall architectural tower that does not include floor area but shall house screened communications or emergency equipment, and create an iconic landmark for the public to identify the site from land and water.

3. The Community Development Director is authorized to submit the Coastal Land Use Plan Amendment No. LC2012-002 to the California Coastal Commission for review.
4. Coastal Land Use Plan Amendment No. LC2012-002 shall become effective upon approval from the California Coastal Commission unless modifications to the amendment are required as a result the Coastal Commission's approval. If the California Coastal Commission approves and does not modify the amendment, no further action will be required by the City Council. If the California Coastal Commission approves a modified amendment, the amendment shall require a separate action by the City Council following Coastal Commission approval.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on September 11, 2012, by the following vote to wit:



NANCY GARDNER, MAYOR

ATTEST:

  
LEILANI BROWN, CITY CLERK



STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF NEWPORT BEACH

}  
}  
} ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2012-80 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 11<sup>th</sup> day of September, 2012, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Hill, Rosansky, Curry, Selich, Henn, Daigle, Mayor Gardner

Noes: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12<sup>th</sup> day of September, 2012.

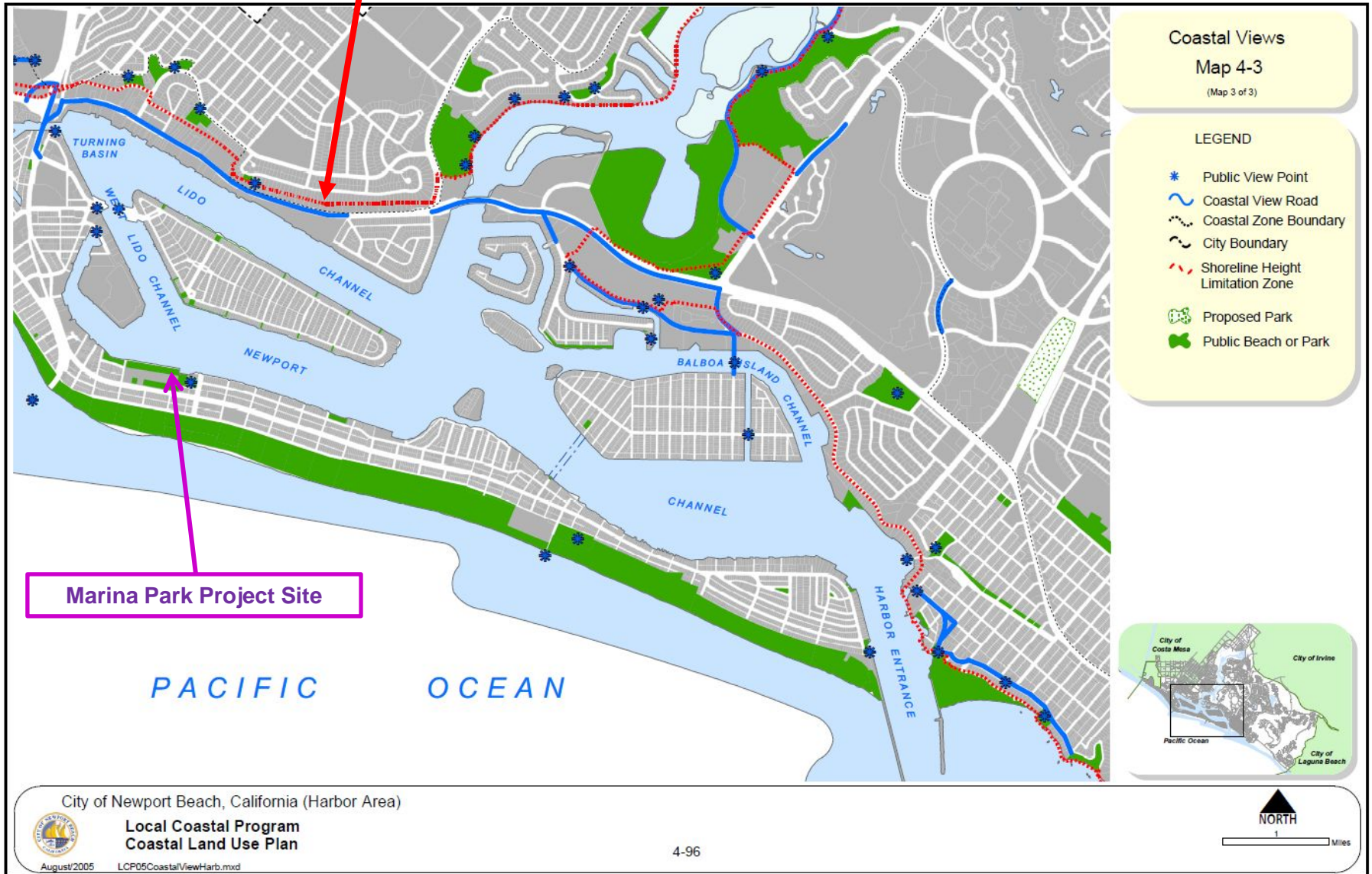
*Leilani I. Brown*

City Clerk  
Newport Beach, California

(Seal)



# Shoreline Height Limitation Zone Boundary Line



California Coastal Commission  
[NPB-MAJ-1-12]

**RECEIVED**

**FEB 19 2013**

**City of Newport Beach CLUP Amendment (NPB-MAJ-1-12)**

CALIFORNIA  
COASTAL COMMISSION

**Applicant:** City of Newport Beach

**Agent:** Schmitz & Associates, Inc.

**Project Site/Property Address:** 1600 W. Balboa Blvd. Newport Beach, CA

**Project Description:** Application to Amend the City's Certified Land Use Plan (CLUP) Section 4.4.2-1 to include an exception to the Shoreline Height Limitation Zone to allow an architectural a single 73' tall tower feature at Marina Park (1600 W. Balboa Blvd.)

I, Commissioner Martha McClure, had ex parte communication with Don Schmitz, agent for the above-referenced residential project, on Thursday, February 7, 2013 in Redondo Beach, CA. My discussions with Mr. Schmitz were as follows:

Mr. Schmitz noted:

- The proposed tower will be only one of several tall iconic landmarks located on the Balboa Peninsula and thus will be visually compatible with the surrounding environment;
- The tower will act as a beacon to park visitors on land as well as watercraft (especially small watercraft) drawing in visitors and maximizing the public's awareness of and use of the park;
- The tower is a critical focal point and architectural element providing contrast in shape, line and color on the project site and avoiding monotony in design and landscape;
- The tower will not be prominently (adversely) visible from various scenic elements in the CLUP due to its limited width;
- The Tower will house the City's Tsunami Warning System (Sirens) which are currently located on the site atop 50' tall poles (the poles would be removed as the sirens would be housed in the new tower).
- The tower will be made primarily of large glass panes and would be translucent and visually unobtrusive.
- The tower would create visual interest in the area and compliment the landscaping and architectural design at the park;
- The tower will not occasion adverse visual impacts and therefore will be consistent with sec. 30251 of the Coastal Act;

  
Commissioner Martha McClure

2/11/13  
Date