



FINAL MINUTES

OC LAFCO REGULAR MEETING AGENDA

Wednesday, July 8, 2020
8:15 a.m.

Due to COVID-19, this meeting was conducted by teleconference pursuant to the provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspend certain requirements of the Ralph M. Brown Act.

1. CALL TO ORDER

Chair Brothers called the meeting of the Orange County Local Agency Formation Commission (OC LAFCO) to order at 8:17 a.m., announced that the Commission meeting is being conducted by teleconference, and participation by Commissioners and staff are from remote locations.

2. BOARD APPOINTMENTS - COMMISSIONERS BUCKNUM, FISLER, AND POSEY

Commission Clerk Cheryl Carter-Benjamin announced new terms that began on July 1, 2020 and that the respective oaths were completed electronically.

3. ROLL CALL

The following Commissioners and Alternates were present:

- **Chair Cheryl Brothers**
- **Vice Chair Douglass Davert**
- **Commissioner Lisa Bartlett**
- **Commissioner Wendy Bucknum**
- **Commissioner James Fisler**
- **Commissioner Derek J. McGregor**
- **Commissioner Donald Wagner**
- **Alternate Commissioner Kathryn Freshley**
- **Alternate Commissioner Lou Penrose**
- **Alternate Commissioner Mike Posey**

The following Commissioner was absent:

- **Alternate Commissioner Michelle Steel**

The following OC LAFCO staff members were present:

- Executive Officer Carolyn Emery
- Policy Analyst Luis Tapia
- Policy Analyst Gavin Centeno
- Commission Clerk Cheryl Carter-Benjamin
- Legal Counsel Scott Smith

4. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION (Received After Agenda Distribution)

Commission Clerk Cheryl Carter-Benjamin noted that no supplemental correspondence was received.

5. PRESENTATION

5a. – Recognition of Service – Commissioner Allan Bernstein

Chair Brothers presented a resolution to Commissioner Bernstein, recognizing his contributions during his tenure on the Commission.

Comments were made by Commissioners commending Dr. Bernstein for his commitment and service to the Board.

Dr. Bernstein expressed gratitude to the Commission for the opportunity to serve and commented on the important responsibility of the Commission.

Chair Brothers called for a motion on the item. The Commission Clerk conducted a roll call vote on the item.

MOTION: Adopt the Resolution recognizing Dr. Allan Bernstein for his service. (Derek J. McGregor)

SECOND: Douglass Davert

FOR: Derek J. McGregor, Douglass Davert, Lisa Bartlett,
Wendy Bucknum, James Fisler, Donald Wagner,
Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

6. PUBLIC COMMENT

Chair Brothers requested public comments on any non-agenda items.

Vice Chair Davert read written comments submitted by email from Stacy Taylor, Water Policy Manager of Mesa Water (*Attachment A*).

Chair Brothers closed the public comments.

7. CONSENT CALENDAR

Chair Brothers called for the approval of the consent calendar. **Commissioner Bucknum** motioned for approval of the consent calendar and **Commissioner McGregor** seconded the motion. **Commissioners Davert** and **Wagner** requested Agenda Items 7b and 7c be pulled for further discussion.

Chair Brothers called for a roll call vote on the approval of the remainder of the consent calendar. The Commission Clerk conducted a roll call vote on the item.

7a. – Approval of Minutes - May 13, 2020 Regular Commission Meeting

MOTION: Approve the consent calendar, excepting items pulled.
(Wendy Bucknum)

SECOND: Derek J. McGregor

FOR: Wendy Bucknum, Derek J. McGregor, Douglass Davert,
Lisa Bartlett, James Fisler, Donald Wagner,
Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

7b. – Legislative Report (July 2020)

Commissioners discussed the bill language of SB 625 and noted since the bill focused specifically on a special district in Los Angeles County and Los Angeles LAFCO, it did not impact Orange LAFCO. Some Commissioners expressed concern involving local control.

Chair Brothers called for public comments. Comments submitted by Stacy Taylor, Water Policy Manager of Mesa Water, by email (*Attachment A*).

Chair Brothers called for a motion on the item. **Vice Chair Davert** made a motion that the Commission adopt a neutral and watch position on SB 625 and receive and file the legislative report. **Commissioner Wagner** seconded the motion.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Receive and file the legislative report; Adopt a neutral and watch position on SB 625. (Douglass Davert)
SECOND: Donald Wagner
FOR: Douglass Davert, Donald Wagner, Lisa Bartlett, Wendy Bucknum, James Fisler, Derek J. McGregor, Cheryl Brothers
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

7c. – Professional Consultant Services Agreement with Bob Hall & Associates

There was Commission discussion on the costs and process for the recruitment and the impacts to the work plan due to the Assistant Executive Officer vacancy. General direction from the Commission was given to explore options for the recruitment at a lower cost.

Chair Brothers called for public comments. Comments submitted by Stacy Taylor, Water Policy Manager of Mesa Water, by email (*Attachment A*).

Chair Brothers called for a motion on the item. **Commissioner Wagner** made a motion that the Commission deny approval of the professional services agreement with Bob Hall & Associates. **Vice Chair Davert** seconded the motion and noted for staff to bring back options to filling the position. **Commissioner Derek J. McGregor** clarified that motion is to reject approval of the agreement and direct staff to come back with an alternative recruitment approach. **Commissioner Davert** confirmed that he seconded motion for reasons stated that include staff bringing back options.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Deny approval of the Professional Services Agreement with Bob Hall & Associates; direct staff to bring back alternative recruitment options. (Donald Wagner)
SECOND: Douglass Davert
FOR: Donald Wagner, Douglass Davert, Lisa Bartlett, James Fisler, Derek J. McGregor
AGAINST: Wendy Bucknum, Cheryl Brothers
ABSTAIN: None

MOTION PASSED: 5-2.

8. PUBLIC HEARING

No public hearing items scheduled.

9. COMMISSION DISCUSSION AND ACTION

9a. – Professional Consultant Services Agreement with Eide Bailly

Executive Officer Carolyn Emery presented the staff report on the professional services agreement with Eide Bailly for accountant consulting services.

Chair Brothers called for Commission discussion and public comments. Commission Clerk Cheryl Carter-Benjamin noted no public comments were received by email on this item. **Chair Brothers** called for a motion on the item. **Vice Chair Davert** made a motion to approve the professional services agreement with Eide Bailly. **Commissioner McGregor** seconded the motion.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Approve the Professional Services Agreement with Eide Bailly LLP (formerly Platinum Consulting Group). (Douglass Davert)

SECOND: Derek J. McGregor

FOR: Douglass Davert, Derek J. McGregor, Lisa Bartlett, Wendy Bucknum, James Fisler, Donald Wagner, Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0

9b. – Final Comprehensive Quarterly Report

Policy Analyst Gavin Centeno presented the staff report on the final comprehensive quarterly report for Fiscal Year 2019-2020.

Chair Brothers called for Commission discussion and public comments. The Commission Clerk noted no public comments were received by email on this item. **Chair Brothers** called for a motion on the item. **Vice Chair Davert** made a motion to receive and file the final comprehensive quarterly report. **Commissioner McGregor** seconded the motion.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Receive and File the Final Comprehensive Quarterly Report for FY 19-20. (Douglass Davert)

SECOND: Derek J. McGregor

FOR: Douglass Davert, Derek J. McGregor, Lisa Bartlett, Wendy Bucknum, James Fisler, Donald Wagner, Cheryl Brothers

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

9c. – 2020-21 OC LAFCO Work Plan

Executive Officer Carolyn Emery presented the staff report on the proposed FY 2020-21 Work Plan and recommended amending staff recommendation to continue consideration of the plan to the August meeting. She stated that the reasoning is based on the Commission's action involving the Assistant Executive Officer recruitment. Ms. Emery added that she would bring back an adjusted work plan based on current staffing.

Chair Brothers called for Commission discussion and public comments. Commission Clerk Cheryl Carter-Benjamin noted no public comments were received by email on this item. **Chair Brothers** called for a motion on the item. **Commissioner Bucknum** made a motion to continue consideration of the proposed work plan to the August regular meeting. **Commissioner McGregor** seconded the motion.

The Commission Clerk conducted a roll call vote on the item.

MOTION: Continue consideration of the FY 2020-21 Work Plan to the August regular meeting. (Wendy Bucknum)
SECOND: Derek J. McGregor
FOR: Wendy Bucknum, Derek J. McGregor, Douglass Davert, Lisa Bartlett, James Fisler, Cheryl Brothers
AGAINST: Donald Wagner
ABSTAIN: None

MOTION PASSED: 6-1.

10. COMMISSIONER COMMENTS

General comments were made by Commissioners.

11. EXECUTIVE OFFICER'S REPORT

11a. – Out-of-Area Service Agreement for Provisions of Fire Protection and Emergency Medical Services to the Hamer Unincorporated Island (OAA20-04)

Executive Officer Carolyn Emery presented the staff report on the Out-of-Area Service Agreement involving the County and the City of Placentia for fire and EMS services. She noted that no action is required by the Commission on this item and acknowledged the participation of the Mayor and City Manager of Placentia on the meeting teleconference.

Commissioner Bartlett noted that the County has been in contact with the residents of the Hamer Island and city officials of Placentia. **Commissioner Bartlett** expressed her gratitude to the agencies for their collaboration to ensure that the residents receive the most efficient delivery of fire protection services.

11b. - Update on Agency Projects and Activities

Executive Officer Carolyn Emery gave a brief oral update on the following agency projects and activities.

- Communication Plan
- MSR Work Plan Update
- Fiscal Indicators
- CALAFCO Messaging Team

Chair Brothers noted that several public comments were received on Agenda Item 11b and would be read by the Commission Clerk with an adjusted time limit of one minute due to the volume received. The Chair further noted that complete email correspondence would be submitted into the record and included in part to the minutes.

The Commission Clerk read into the record comments submitted by the following (*Attachment A*):

Dennis Durgan, President of Newport Harbor Foundation

Melanie Schlotterbeck, Executive Director of Friends of Harbors, Beaches and Parks

Eric Bauer, MPA, Newport Beach Lifeguard Battalion Chief, Boat Operator

Paul Matheis

Wade Womack, Newport Beach, CA

Tom LeBeau, Newport Harbor Homeowners Association Board Member

12. INFORMATIONAL ITEMS & ANNOUNCEMENTS

12a. - CALAFCO Update

Chair Brothers provided an update on recent CALAFCO activities, noting the cancellation of the annual conference, conducting of the board elections by mail ballot and revisiting membership dues. She added that she would inform the Commission of the Southern Region meeting once the meeting date has been determined.

13. CLOSED SESSION

The Commission adjourned to closed session at 10:13 a.m.

Chair Brothers reconvened the regular meeting at 10:18 a.m. and stated that there were no reportable actions of the closed session.

14. NOTICE OF ADJOURNMENT OF THE REGULAR COMMISSION MEETING

Chair Brothers adjourned the Regular Commission Meeting at 10:18 a.m. to the next regular OC LAFCO meeting scheduled for Wednesday, August 12, 2020, at 8:15 a.m.

Cheryl Brothers, Chair
Orange County Local Agency Formation Commission

By: Cheryl Carter-Benjamin
Cheryl Carter-Benjamin
Commission Clerk

Attachments:

Attachment A: Public Comments for Agenda Items 6, 7b, and 7c

ATTACHMENT A

From: [Stacy Taylor](#)
To: [Cheryl Carter-Benjamin](#)
Cc: [Doug Davert](#); [James Fisler](#)
Subject: Public comments
Date: Wednesday, July 8, 2020 8:28:30 AM

On behalf of Mesa Water District, we thank Commissioner Bernstein for his service on OC LAFCO, ensuring the effective, economical, efficient delivery of government services to Orange County's residents & businesses. Thank you Commissioner Bernstein, it's been a pleasure having you represent our local control interests.

Stacy Taylor
Water Policy Manager
Mesa Water

Sent from my iPhone - 714.791.0848

ATTACHMENT A

From: [Stacy Taylor](#)
To: [Cheryl Carter-Benjamin](#)
Subject: Public comment
Date: Wednesday, July 8, 2020 8:43:56 AM

Mesa Water supports a neutral position

Sent from my iPhone - 714.791.0848

ATTACHMENT A

From: [Stacy Taylor](#)
To: [Cheryl Carter-Benjamin](#)
Subject: Public comment
Date: Wednesday, July 8, 2020 8:59:56 AM

Having served on several management level recruitment panels for OC Cities & Special Districts, I know there are highly skilled HR professionals who may be able to provide support to LAFCO as a shared service.

Sent from my iPhone - 714.791.0848



ATTACHMENT B

July 6, 2020

Good Morning Commissioners,

My name is Dennis Durgan. On behalf of the Newport Harbor Foundation, I submit these written public comments on Agenda item #11b-Executive Officer MSR Work Plan Update:

The Newport Harbor Foundation respectfully requests OC LAFCO to include an analysis of Harbor Patrol Services in Newport Harbor in the scope of the pending MSR review of CSA 26-OC Parks. We believe the City of Newport Beach can provide a more efficient and effective harbor patrol service in Newport, compared to the current service provided by the Orange County Sheriff's Department.

The Harbor Patrol analysis would likely include a review of these 4 issues:

1. **Jurisdiction** - Does the City of Newport Beach have jurisdiction over Newport Harbor?

Please find exhibit 1 attached. It is a City map indicating 89% of Newport Harbor water is City jurisdiction. Additionally, Newport Harbor is fully surrounded by the City of Newport Beach.

2. **Efficiency** - Can the City of Newport Beach provide more efficient Harbor Patrol Services?

The City has the sunk cost of providing an existing City Harbor Department (4 patrol boats), Lifeguard services (3 rescue boats), Police, and City Fire Services in or around Newport Harbor. We believe the marginal cost to assume harbor patrol responsibility in Newport Harbor will be less expensive than the current stand-alone Sheriff Harbor Patrol Operation in Newport Harbor.

3. **Effectiveness** - Can the City of Newport Beach provide more effective Harbor Patrol Service?

The City currently provides Harbor Department Services, including code enforcement, in Newport Harbor. The City currently performs vessel rescue and boating law enforcement along City coastline via 3 Lifeguard rescue boats during summer Lifeguard staffing hours. The City has a premier police agency and City Fire Department personnel have a higher level of firefighter training than the Sheriff's Harbor Patrol personnel. We believe the City can provide more effective and better integrated harbor patrol services in Newport Harbor under the existing City services.

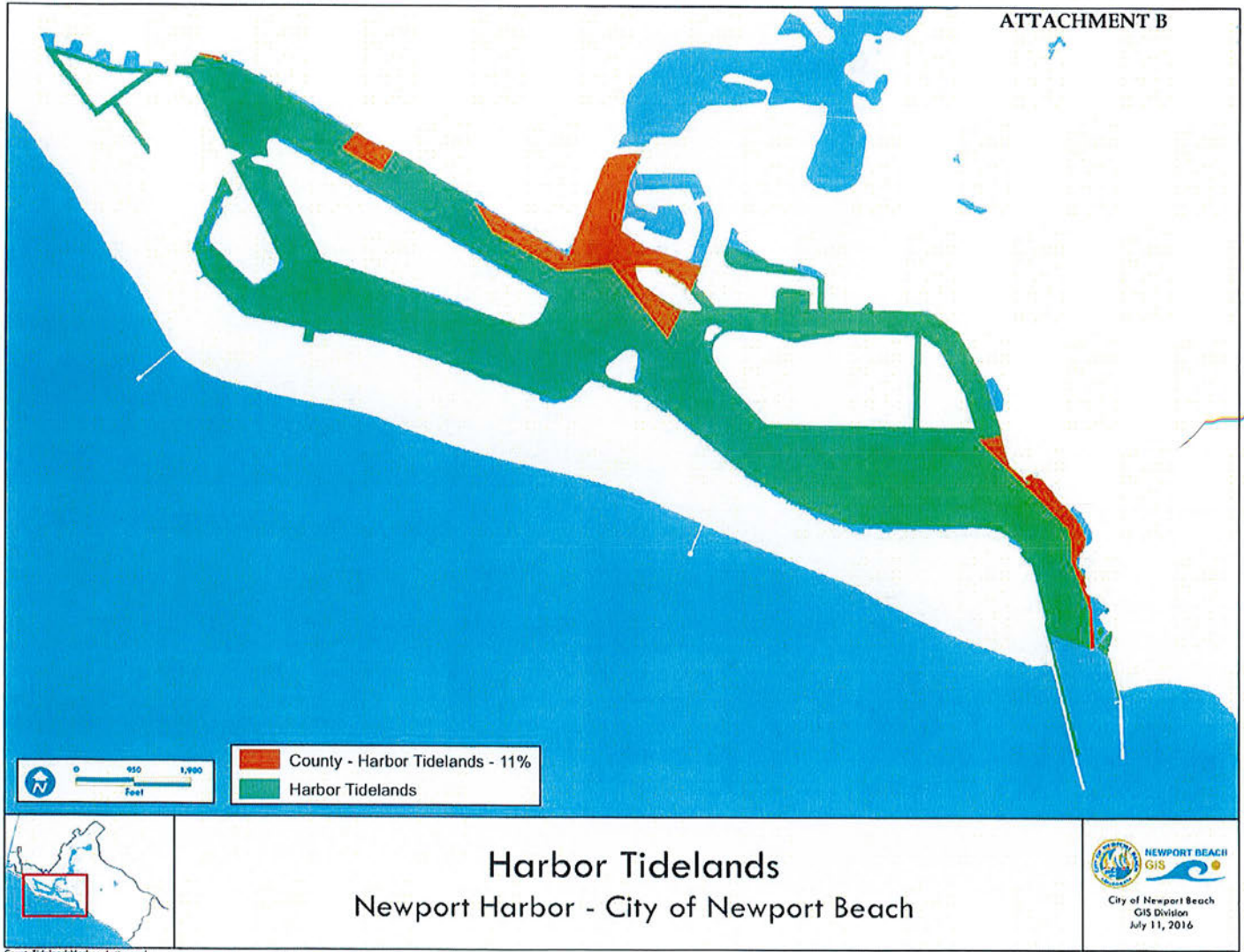
4. **Funding** - Can the County share in the costs of a City run Harbor Patrol Service?

The Sheriff's Harbor Patrol in Newport Harbor is currently paid for by OC Parks via Fund 405 and Newport County Tideland Funds which have been allocated to harbor patrol services for decades. Originally, Harbor Patrol services in Newport Harbor were provided by Park Rangers with these same funds via a stand-alone "Harbor District". The Harbor District was subsequently absorbed by the County as Harbors, Beaches and Parks, now known as OC Parks. We believe it is appropriate for the County to share in the costs of a City run harbor patrol operation given the significant revenue generated from vessel property taxes, tidelands fees, and other sources in Newport Harbor.

In closing, including an analysis of harbor patrol services in Newport Harbor in the pending CSA 26 review would greatly benefit the citizens of Orange County in the form of cost savings, improved services and more streamlined government.

Respectfully,

Dennis Durgan
President, Newport Harbor Foundation





ATTACHMENT B

Comments on Agenda Item 11-B (Executive Director's Oral Update) Submitted by Friends of Harbors, Beaches and Parks (07-07-2020)

Good morning. My name is Melanie Schlotterbeck and I work with regional non-profit Friends of Harbors, Beaches and Park (FHBP). We formed in 1997 to support OC Parks after the bankruptcy.

We understand that LAFCO is conducting a Municipal Service Review (MSR) for County Service Area (CSA) 26, which includes not only the county regional park system, but also the harbor patrol operations. **FHBP supports a detailed review of CSA 26.** Today, we submit the following comments.

First, the existing county park system is an invaluable asset to county residents and visitors. The pandemic has proven how important parklands and park access are. We encourage LAFCO and the County to actively pursue acquisition of additional park properties for the public benefit.

Second, based on the 2006 MSR, OC Parks funding comes from property taxes, user fees, and rents/concessions. It appears the bulk of this is appropriated to the Sheriff Harbor Patrol operations in Newport Harbor. However, the City of Newport Beach has established its own Harbor Division. As a result of this duplication, OC Parks is deprived of critical operating funds and taxpayers pay twice for similar services.

As the process moves forward, we hope the following questions are addressed for CSA 26:

- Was the study from the 2006 MSR to investigate shifting funding and operational responsibilities from Harbor Patrol to Newport Beach completed? And, what recommendations have been implemented already?
- Will the MSR address the duplication of services and determine which agency could provide the most appropriate, cost-effective services for the harbor?
- Are the existing funds potentially being spent outside the district since the Sheriff has to meet Homeland Security needs? Would transitioning to a city-operated harbor patrol improve the use of CSA 26 funds?

To conclude, we offer our assistance in this process and request notification when the comment period opens. FHBP's goal is to strongly advocate for needed funding for all aspects of OC Parks' operations and ensure that the County works closely with this department to provide proper funding. Thank you.

ATTACHMENT B

Dear Orange County LAFCO Commissioners,

I am writing this letter for public comment on Agenda Item #11B for the Meeting of July 8, 2020.

You have been presented with a unique and timely opportunity to look at the provision of Harbor Patrol Services in Newport Beach. As you are aware The Orange County Harbor Patrol provides fully sworn law enforcement services in the Newport Harbor. This could be done by the City of Newport Beach at less cost and accomplish the same outcome. If the City were to use a PC-832 Certified, Limited Peace Officer status, Marine Safety Officer/Park Ranger model for the Harbor Patrol it would be more cost effective. That type of employee already exists in the Harbor Division of the City and Lifeguard Division of the Newport Fire Department. Very rarely is the need for a fully sworn, armed peace officer necessary for the patrol of Newport Harbor. City of Newport Beach Marine Safety Officers are permitted to enforce, certain municipal codes, Harbors and Navigation codes, as well as any other laws as permitted. In the rare circumstance a fully sworn, armed officer were needed, a city Harbor Patrol Boat could employ the assistance of the Newport Beach Police Department. This could be true for accident investigation, or other more serious law enforcement need. The City already has 3 offshore Rescue Boats which employ Marine Safety Officers, Marine Safety Captains and seasonal lifeguard personnel. These employees are much less expensive than a fully sworn Sheriff's Deputy. The city also maintains an underwater search and recovery team which is a duplicate service provided by the County Sheriff. With the addition or conversion of existing Lifeguard Boats the City Lifeguards could provide marine fire suppression and would work closely with the Newport Fire Department of which they are already part. The training and response could be more coordinated as there is already a clear chain of command and communication system in place.

This model would be funded with existing City and County and State revenue, including County Parks funds, State Boating and Waterways funds and State tidelands revenue. Other user fees and revenue could also be identified and used as appropriate.

Finally, the OC Harbor Patrol facility could be improved to have fewer rescue boats and to provide more boat guest slips, and also provide better access to the park and beach located there, to support the goals and mandates of the California Coastal Commission and the needs of the Citizens of Newport Beach and the County.

I hope you will consider these comments when you consider providing the most effective and efficient and customer friendly model for the provision of Harbor Patrol and Rescue Services.

Sincerely,

Eric Bauer, MPA
Newport Beach Lifeguard Battalion Chief, Boat Operator (Retired)

ATTACHMENT B

From: [P. Matheis](#)
To: citycouncil@newportbeachca.gov; Cheryl Carter-Benjamin
Subject: LAFCO
Date: Friday, July 3, 2020 9:51:54 AM

TO: LAFCO

FROM: Paul Matheis

SUBJECT: Newport Harbor review

To whom it may concern:

Any review of public safety services in Newport Harbor should include a comprehensive analysis of what is currently provided and what should be funded by the public. Additionally, the residents of Newport Beach and the surrounding communities of Orange County often desire a higher level of services. To organize these services, it will be important to separate public safety operational functions from the administration of Newport Harbor resource regulatory usage.

The administrative control of boating operations in Newport Harbor was transferred from the Orange County Sheriff's Department (OCSD) within the last five years. There were manifold reasons for this change; perhaps the most likely benefit to the City of Newport Beach (City) was more local control, at some financial cost to the City. Certainly, direct control of these functions by an employee reporting directly to City officials enhances the efficiency of the administrative services to a demanding public. However, there is likely a financial charge to the City taxpayer in the fully extended cost of pay and benefits, including membership in retirements costs to CalPERS. An unbiased actuarial assessment should be conducted to determine the difference between what the City was paying and what they spend today to fully understand any difference.

The operational functions of the public safety component regarding Newport Harbor as well as the City responsibility for the three mile limit from mean high tide is perhaps the most expensive to protect. Currently, the safety of the public is provided by a constellation of resources from public agencies that serve to address an immediate response to an incident as well as long term campaign efforts to mitigate an emergency event. The agencies currently responsible for the basic public safety response in Newport Harbor and the Newport Beach coastline are the Newport Beach Fire Department (lifeguard marine operations division), the Orange County Sheriff's Department (Harbor Patrol Division), and the United States Coast Guard (USCG). The authority for these agencies' responsibility rests in state and Federal statutes; Cal. Emergency Services Act, Sec. 8618, Cal Harbors & Nav. Code Sec. 510, 33 U.S.C. Section 1223.

Authority versus responsibility and capability. From a local government perspective it is clear

ATTACHMENT B

that the City controls any emergency incident that occurs within its jurisdictional boundaries (Cal. Emergency Services Act Sec. 8618). This includes the vast majority of the Harbor as well as the coastline out to the three mile limit. The local sheriff is mandated by California law to maintain a capability to aid and assist persons and vessels in the coastal waters independent of jurisdiction (Cal. Harbors & Nav. Code Sec. 510). The USCG maintains broad authority over navigation safety in the navigable waters of the United States (33 U.S.C. Sec. 1223).

At some point in about 1973, the City abdicated responsibility for some control over the Newport Harbor to the Orange County Harbor Patrol. Subsequently, the Harbor Patrol operation was transferred to the Orange County Sheriff's Department and the staffing for the previous duties were now done by OCSD (deputy sheriff) personnel. The difference here is that the OCSD deputies are trained law enforcement "safety" members with a different retirement benefit under the 1937 Act retirement system. The reasons for this change initially included issues of drug traffic and access to Newport Harbor and the need for enhanced law enforcement protection, and the subsequent increase of immigration challenges along the Orange County coastline.

The November 9, 2010 review of the Orange County Sheriff-Coroner Harbor Patrol discussed, among other issues, the roles and responsibilities of the OCSD Harbor Patrol. In that document, the issue of marine firefighting was addressed. According to the Orange County Counsel, marine firefighting duties were not a legal obligation of the OCSD Harbor Patrol. This is important because it relieves the OCSD Harbor Patrol from any responsibility to deliver an effective and safe firefighting force for the boating public of Orange County. Accordingly, the OCSD Harbor Patrol deputies, while highly skilled law enforcement officers, are not properly trained firefighters and would not be able nor are they required to conduct interior structural firefighting operations onboard a vessel.

Marine firefighting is a very dangerous aspect of firefighting and should not be undertaken by an unqualified, or undertrained employee. The complexity of a vessel with redundant electrical systems, liquid fueled power systems, rotating machinery, high pressure hydraulic systems, hazardous materials storage, large fuel capacity, confined space challenges, and operations away from land all serve to make this a task for only those trained and certified for this dangerous work. The California Labor Code under the injury, illness prevention program (Cal. Labor Code Sec. 3203) is instructive. The law dictates that an employee whose duties include dangerous activities must be properly trained and equipped to perform such duties. The OCSD Harbor Patrol deputies are not properly trained in firefighting duties, much less marine firefighting duties. The instruction provided to deputies with respect with marine firefighting is a curriculum not developed by firefighters, not vetted by the Office of the State Fire Marshal (State Fire Training Division) and not approved by State Fire Training (SFT), the only agency approved by the State to approve firefighting curriculum in California.

ATTACHMENT B

Absent the proper training of OCSD deputies in firefighting instruction, developed by SFT and delivered by qualified instructors, these OCSD deputies cannot and should not engage in interior structural firefighting duties onboard a vessel. This means that if they do not, they will not be disciplined for lack of performance because they are not properly trained. The City provides a false sense of security to the public in this sense. Remember that in Newport Harbor, unlike Dana Point and Huntington Harbor, there are over 1200 moorings. These boats on these moorings should be viewed as floating condominiums away from advanced fire protection capability. I suspect that when boaters see the OCSD fire boat on the water they believe that fire protection is nearby and that they will enjoy an adequate measure of safety, but as I have explained that is not nearly the case.

From a fire protection perspective I believe the City should deploy some degree of firefighting capability to meet a strategy that speaks to the expected challenges within their jurisdiction. The City has the authority, and abdicating this to under trained employees of the OCSD does not meet the challenge nor will it provide political cover in what will eventually occur. The Conception Boat Fire of September 2019, where thirty four people died of smoke inhalation in a boat fire in Ventura County, followed by a fire fatality in Los Angeles in San Pedro Harbor in October 2019 speak to the relevance of a marine firefighting capability. Vessels and boat design are not regulated like structures built on land, and this leads to greater challenges for occupant egress and firefighting ingress. With a great natural harbor in Newport Beach and the large number of vessels therein I have advocated for over ten years that this matter be addressed. The following actions should be done by the authorities having jurisdiction (AHJ):

- 1) Identify the AHJ with marine firefighting in Newport Harbor
- 2) Design and develop a marine firefighting curriculum for all those with responsibility for fire protection on the waters of Newport Harbor and the coastal waters of Newport Beach.
- 3) Deploy an adequate firefighting capability by the AHJ
- 4) Develop and sign a mutual aid agreement with the USCG
- 5) Engage SFT to design and develop a marine firefighting curriculum

Because the City is the AHJ as I have opined in this correspondence I believe that the City will need to meet many of these challenges. With respect to the deployment of a fire suppression capability on the water it must be sufficient to meet the determined strategy. This is to suggest that capability, redundancy, and adequacy are fundamental to this essential service. If the City tries to purchase a single fire boat it will likely be some form of "window dressing" that is likely to sit on the water until it becomes unusable. Vessels, like automobiles, must be used and checked regularly for operational readiness. This is a paramount requirement of a business where the nobility of purpose is protection of the public. If the right people are involved in the decision making process a solution can be achieved where no additional safety employees are added to City staff and sufficient resources are dedicated to a lifeguard rescue vessel with fire pumping capability, as in the Los Angeles County Fire Department lifeguard

ATTACHMENT B

division.

Submitted by,
Paul Matheis

Luis Tapia

From: P. Matheis <pmatheis@live.com>
Sent: Tuesday, July 7, 2020 10:29 AM
To: Luis Tapia
Subject: Orange County LAFCO, MSR for CSA 26 (final draft)

TO: LAFCO
FROM: Paul Matheis
SUBJECT: Newport Harbor review MSR for CSA 26

To whom it may concern:

Any review of public safety services in Newport Harbor should include a comprehensive analysis of what is currently provided and what should be funded by the public. Additionally, the residents of Newport Beach and the surrounding communities of Orange County often desire a higher level of services. To organize these services, it will be important to separate public safety operational functions from the administration of Newport Harbor resource regulatory usage.

The administrative control of boating operations in Newport Harbor was transferred from the Orange County Sheriff's Department (OCSD) within the last five years. There were manifold reasons for this change; perhaps the most likely benefit to the City of Newport Beach (City) was more local control, at some financial cost to the City. Certainly, direct control of these functions by an employee reporting directly to City officials enhances the efficiency of the administrative services to a demanding public. However, there is likely a financial charge to the City taxpayer in the fully extended cost of pay and benefits, including membership in retirements costs to CalPERS. An unbiased actuarial assessment should be conducted to determine the difference between what the City was paying and what they spend today to fully understand any difference.

The operational functions of the public safety component regarding Newport Harbor as well as the City responsibility for the three mile limit from mean high tide is perhaps the most expensive to protect. Currently, the safety of the public is provided by a constellation of resources from public agencies that serve to address an immediate response to an incident as well as long term campaign efforts to mitigate an emergency event. The agencies currently responsible for the basic public safety response in Newport Harbor and the Newport Beach coastline are the Newport Beach Fire Department (lifeguard marine operations division), the Orange County Sheriff's Department (Harbor Patrol Division), and the United States Coast Guard (USCG). The authority for these agencies' responsibility rests in state and Federal statutes; Cal. Emergency Services Act, Sec. 8618, Cal Harbors & Nav. Code Sec. 510, 33 U.S.C. Section 1223.

Authority versus responsibility and capability. From a local government perspective it is clear that the City controls any emergency incident that occurs within its jurisdictional boundaries (Cal. Emergency Services Act Sec. 8618). Further, the Newport Beach police have primary responsibility for general law enforcement within the City boundaries, including Newport Harbor and other inland waterways within Newport Beach boundaries and in the Pacific Ocean three nautical miles off the Newport Beach coastline (California Government Code Section 41601). The local sheriff is mandated by California law to maintain a capability to aid and assist persons and vessels in the coastal waters independent of jurisdiction (Cal. Harbors

ATTACHMENT B

& Nav. Code Sec. 510). The USCG maintains broad authority over navigation safety in the navigable waters of the United States (33 U.S.C. Sec. 1223).

At some point in about 1973, the City abdicated responsibility for some control over the Newport Harbor to the Orange County Harbor Patrol. Subsequently, the Harbor Patrol operation was transferred to the Orange County Sheriff's Department and the staffing for the previous duties were now done by OCSD (deputy sheriff) personnel. The difference here is that the OCSD deputies are trained law enforcement "safety" members with a different retirement benefit under the 1937 Act retirement system. The reasons for this change initially included issues of drug traffic and access to Newport Harbor and the need for enhanced law enforcement protection, and the subsequent increase of immigration challenges along the Orange County coastline.

The November 9, 2010 review of the Orange County Sheriff-Coroner Harbor Patrol discussed, among other issues, the roles and responsibilities of the OCSD Harbor Patrol. In that document, the issue of marine firefighting was addressed. According to the Orange County Counsel, marine firefighting duties were not a legal obligation of the OCSD Harbor Patrol. This is important because it relieves the OCSD Harbor Patrol from any responsibility to deliver an effective and safe firefighting force for the boating public of Orange County. Accordingly, the OCSD Harbor Patrol deputies, while highly skilled law enforcement officers, are not properly trained firefighters and would not be able nor are they required to conduct interior structural firefighting operations onboard a vessel.

Marine firefighting is a very dangerous aspect of firefighting and should not be undertaken by an unqualified, or undertrained employee. The complexity of a vessel with redundant electrical systems, liquid fueled power systems, rotating machinery, high pressure hydraulic systems, hazardous materials storage, large fuel capacity, confined space challenges, and operations away from land all serve to make this a task for only those trained and certified for this dangerous work. The California Labor Code under the injury, illness prevention program (Cal. Labor Code Sec. 3203) is instructive. The law dictates that an employee whose duties include dangerous activities must be properly trained and equipped to perform such duties. The OCSD Harbor Patrol deputies are not properly trained in firefighting duties, much less marine firefighting duties. The instruction provided to deputies with respect with marine firefighting is a curriculum not developed by firefighters, not vetted by the Office of the State Fire Marshal (State Fire Training Division) and not approved by State Fire Training (SFT), the only agency approved by the State to approve firefighting curriculum in California.

Absent the proper training of OCSD deputies in firefighting instruction, developed by SFT and delivered by qualified instructors, these OCSD deputies cannot and should not engage in interior structural firefighting duties onboard a vessel. This means that if they do not, they will not be disciplined for lack of performance because they are not properly trained. The City provides a false sense of security to the public in this sense. Remember that in Newport Harbor, unlike Dana Point and Huntington Harbor, there over 1200 moorings. These boats on these moorings should be viewed a floating condominiums away from advanced fire protection capability. I suspect that when boaters see the OCSD fire boat on the water they believe that fire protection is nearby and that they will enjoy an adequate measure of safety, but as I have explained that is not nearly the case.

From a fire protection perspective I believe the City should deploy some degree of firefighting capability to meet a strategy that speaks to the expected challenges within their jurisdiction. The City has the authority, and abdicating this to under trained employees of the OCSD does not meet the challenge nor will it provide political cover in what will eventually occur. The Conception Boat Fire of September 2019, where thirty four people died of smoke inhalation in a boat fire in Ventura County, followed by a fire fatality in Los Angeles in San Pedro Harbor in October 2019 speak to the relevance of a marine firefighting capability. Vessels and boat

ATTACHMENT B

design are not regulated like structures built on land, and this leads to greater challenges for occupant egress and firefighting ingress. With a great natural harbor in Newport Beach and the large number of vessels therein I have advocated for over then years that this matter be addressed. The following actions should be done by the authorities having jurisdiction (AHJ):

- 1) Identify the AHJ with marine firefighting in Newport Harbor
- 2) Design and develop a marine firefighting curriculum for all those with responsibility for fire protection on the waters of Newport Harbor and the coastal waters of Newport Beach.
- 3) Deploy an adequate firefighting capability by the AHJ
- 4) Develop and sign a mutual aid agreement with the USCG
- 5) Engage SFT to design and develop a marine firefighting curriculum
- 6) Conduct regular marine firefighting exercises with NBFD personnel so as to achieve proficiency

Because Newport Beach is the AHJ I believe that the City will need to meet many of these challenges. With respect to the deployment of a fire suppression capability on the water it should be sufficient to meet the determined strategy for the protection of life and property. This is to suggest that capability, redundancy, and adequacy are fundamental to this essential service. If the City attempts to engage in a minimalist approach, via the purchase of a single under-engineered fire boat it may only serve as some form of "window dressing" that will not address the operational need and sit on the water until it becomes unusable. Vessels, like automobiles, must be used and check regularly for operational readiness. This is a paramount requirement of a business where the nobility of purpose is protection of the public. If the right people are involved in the decision making process a solution can be achieved with a properly engineered and redundant solution, including sufficient resources dedicated to a lifeguard rescue vessel with fire pumping capability perhaps similar to what is deployed by the Los Angeles County Fire Department lifeguard division.

Submitted by,
Paul Matheis

ATTACHMENT B

From: [Carolyn Emery](#)
To: [Carolyn Emery](#)
Subject: FW: Public Comment: Agenda Item 11b OC LAFCO July 8 meeting
Date: Tuesday, July 7, 2020 5:00:59 PM
Attachments: [Page 7 of 2010 Performance Auditor Report.png](#)
[County Sheriff II Taxpayer Cost 2019.png](#)
[County Park Ranger Taxpayer Cost 2019.png](#)
Importance: High

From: Wade Womack <wade@orangecoastla.com>
Sent: Tuesday, July 07, 2020 4:49 PM
To: Cheryl Carter-Benjamin <ccarter-benjamin@oclafco.org>
Subject: Public Comment: Agenda Item 11b OC LAFCO July 8 meeting

Dear Ms. Carter-Benjamin,
Please find written comments below along with three exhibits for submittal under Agenda item 11b.

Thank you,

Wade Womack

Dear Commissioners,
I respectfully request the Commission to include a review of Newport Harbor Patrol Services in the MSR review of CSA 26 for the purpose of analyzing cost savings opportunities. Decades ago, the Sheriff's Department absorbed Harbor Patrol responsibilities from County Park Rangers (Harbors, Beaches and Parks). At the time, it was noted that salary costs were very similar, with a Sheriff Deputy salary at \$24,000 and a County Park Ranger salary at \$22,000 (see first attachment). Fast forward to today and you will find Sheriff Deputy costs have sky rocketed. The second attachment, a screenshot from Transparent California, indicates that an OC Sheriff Deputy II costs the taxpayer anywhere from \$330,000 up to \$392,000 compared to taxpayer cost for a County Park Ranger ranging from \$40,000 to \$82,000 (see third attachment).

The current "Senior Deputy" harbor patrol model is not sustainable. In Newport Harbor alone, there are at least 22 Sheriff Harbor Patrol Officers at the rank of Deputy II or higher. The taxpayer cost is immense.

In recent years, the City has established a foothold in Newport Harbor with the hiring of its first City Harbormaster and other Harbor Department personnel. City leaders have expressed interest in assuming harbor patrol responsibility in Newport Harbor using a cost-effective "Park Ranger" model supported by existing police, fire and lifeguard department personnel.

I believe a review of Harbor Patrol services by OC LAFCO will lead to significant savings for the County and will preserve OC Park funds for their intended use.

Thank you for your consideration.

ATTACHMENT B

Sincerely,

Wade Womack
Newport Beach, CA

REVIEW OF OCSD HARBOR PATROL

responsibility) and unincorporated area local parks (funded through County Service Areas). Harbor District funds continue to pay for harbor and beach activities while County General Funds and County Service Areas are utilized for inland park operations.

- In 1971, the County of Orange proposes and the California Legislature approves additional changes to the Harbors & Navigation Code which allow California harbor improvement districts to acquire, develop and operate inland parks and recreation areas using property tax revenue of the Harbor District. The Orange County Harbor District is renamed the "Harbors, Beaches & Parks (HBP) District."
- In 1975, the HBP Harbor Patrol function is transferred by the Board of Supervisors from the HBP District to OCSD. HBP's limited police officer staff (the former Penal Code 830.4, now Penal Code 830.33(b)) became fully-sworn Deputy Sheriffs (Penal Code 830.1). The Board directs HBP and OCSD to negotiate the provision of services annually, with HBP continuing to fund the operation. The salary ranges and retirement systems are very similar (at the time) between these two positions, mitigating any concern over additional costs of taking this action.
- In 1988/89, the Board of Supervisors requests, and the Local Agency Formation Commission (LAFCO) agrees, to dissolve the HBP District and subsequently form County Service Area (CSA) 26 to avoid exceeding the County's Gann Limit. LAFCO imposes conditions on its approval of these actions, and the Board, by resolution, adopts these conditions, which arguably require the County operationally and financially to continue to provide and pay for HBP services, many of which are provided by Harbor Patrol.
- In December 1994, the County declares bankruptcy. In 1995, the County issues a 20-year bond to assist in paying off its bankruptcy debt. To repay bondholders, the County agrees to divert numerous sources of revenue, including property tax revenues from CSA 26. The estimated FY 10/11 bankruptcy payment for CSA 26 is \$9.3 million. These payments will cease after FY 15/16 at which time CSA 26 will again receive this revenue.
- In June 2002, the County implements the "3% @ 50" retirement plan for public safety employees, resulting in significant increases to Harbor Patrol

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ATTACHMENT B

<u>Name</u>	<u>Job title</u>	<u>Regular pay</u>	<u>Overtime pay</u>	<u>Other pay</u>	<u>Total pay</u>	<u>Benefits</u>	<u>Total pay & benefits</u>
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$104,588.08	\$45,045.93	\$258,190.01	\$134,555.65	\$392,745.66
<u>DEPUTY SHERIFF II</u> <u>William E. Smith</u>		\$108,556.13	\$80,789.25	\$45,851.48	\$235,196.86	\$125,232.14	\$360,429.00
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$87,999.25	\$32,210.77	\$228,766.02	\$126,422.61	\$355,188.63
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$92,121.71	\$36,781.24	\$237,458.95	\$114,917.28	\$352,376.23
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$67,350.75	\$31,979.53	\$207,886.28	\$143,225.13	\$351,111.41
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.01	\$100,682.47	\$22,053.86	\$231,292.34	\$117,439.37	\$348,731.71
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$66,013.29	\$39,876.20	\$214,445.49	\$132,620.48	\$347,065.97
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$72,656.49	\$35,771.04	\$216,983.53	\$129,880.45	\$346,863.98
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$55,778.68	\$47,052.02	\$211,386.70	\$123,652.08	\$335,038.78
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.00	\$70,375.40	\$36,687.89	\$215,619.29	\$118,295.70	\$333,914.99
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.09	\$88,627.53	\$26,646.02	\$223,829.64	\$109,203.58	\$333,033.22
<u>DEPUTY SHERIFF II</u> <u>James E. Smith</u>		\$108,556.01	\$90,150.24	\$23,564.48	\$222,270.73	\$109,954.26	\$332,224.99

Name	Job Title	Regular Pay	Overtime Pay	Other Pay	Total Pay	ATTACHMENT B Benefits	Total Pay and Ben
PARK RANGER I	PARK RANGER I	\$58,364.82	\$84.48	\$0.00	\$58,449.30	\$23,569.65	\$82,018.95
PARK RANGER II	PARK RANGER II	\$50,442.40	\$5,531.29	\$2,020.04	\$57,993.73	\$22,608.11	\$80,601.84
PARK RANGER II	PARK RANGER II	\$49,200.00	\$2,893.05	\$1,956.11	\$54,049.16	\$25,432.37	\$79,481.53
PARK RANGER II	PARK RANGER II	\$50,170.41	\$2,516.41	\$2,621.16	\$55,307.98	\$21,830.65	\$77,138.63
PARK RANGER I	PARK RANGER I	\$51,044.80	\$1,404.15	\$1,558.41	\$54,007.36	\$18,644.66	\$72,652.02
PARK RANGER I	PARK RANGER I	\$41,729.60	\$2,596.39	\$1,064.41	\$45,390.40	\$22,614.38	\$68,004.78
PARK RANGER I	PARK RANGER I	\$40,816.80	\$0.00	\$383.24	\$41,200.04	\$19,752.41	\$60,952.45
SUPVG PARK RANGER II	SUPVG PARK RANGER II	\$18,833.60	\$1,340.62	\$20,873.86	\$41,048.08	\$7,881.64	\$48,929.72
PARK RANGER I	PARK RANGER I	\$26,606.40	\$3,741.05	\$1,010.10	\$31,357.55	\$12,879.97	\$44,237.52
PARK RANGER I	PARK RANGER I	\$26,652.00	\$1,621.89	\$719.52	\$28,993.41	\$11,334.69	\$40,328.10
PARK RANGER I	PARK RANGER I	\$24,856.80	\$2,605.91	\$708.59	\$28,171.30	\$12,036.64	\$40,207.94

From: [Carolyn Emery](#)
To: [Carolyn Emery](#)
Subject: FW: OCSD and Newport Harbor
Date: Tuesday, July 7, 2020 5:03:33 PM

From: Tom LeBeau <tlebeau@accretiverealty.com>
Sent: Tuesday, July 07, 2020 1:35 PM
To: Cheryl Carter-Benjamin <ccarter-benjamin@oclafco.org>
Subject: OCSD and Newport Harbor

Dear OC LAFCO Commissioners,

The Newport Harbor Homeowners Association ("NHHA") is a Harbor homeowner/stakeholder group which is currently being formed as a nonprofit organization. One of the primary, if not singular focus of NHHA is improving harbor related services, specifically for those who actively use the Harbor. Our members include a large contingency of Harbor boaters and Harbor homeowners.

Over the past few years, our members have encouraged the City of Newport Beach to dedicate more resources to Newport Harbor to better serve the harbor users and homeowners that lie within our City jurisdiction. In response, the City has developed the current Harbor Department including a dedicated Harbor Master and multiple patrol boats. With our encouragement, the City has also worked hard to update our Harbor Code to align with the City's jurisdiction of Newport Harbor.

Given the fact that the City now has a Harbor Department, Harbor Master and patrol boats dedicated to serving Newport Harbor, we believe there is a significant redundancy of harbor patrol related services in Newport Harbor. Therefore, it is critically important that OC LAFCO include a review of Harbor Patrol Services in Newport Harbor in the upcoming review of OC Parks (FKA Harbors, Beaches and Parks). Further, we ask that the Commission include a review of the redundant Harbor Patrol Services in Newport Harbor, specifically those tasks currently preformed by OCSD.

With a fresh look at the Harbor Patrol situation, together we can streamline the number of patrol boats in Newport Harbor while identifying various efficiencies to be gained by

both the City and County as we move forward with improving services in Newport Harbor. By working together, we believe various County funds can be preserved while the City is granted the autonomy it deserves to better manage Newport Harbor.

Sincerely,

**Thomas LeBeau
NHHA Board Member
1324 E. Balboa Blvd
Balboa, CA 92661**