

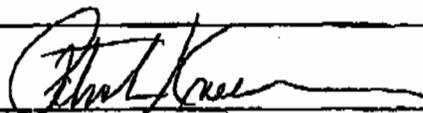
FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Name or description of project, LCP, etc.: LCP Amend DPT-MAL-1-08 (Rev. Findings)  
 Date and time of receipt of communication: June 4, 2010 11:00 AM  
 Location of communication: La Jolla, CA  
 Type of communication (letter, facsimile, etc.): Conference Call  
 Person(s) initiating communication: David Neish  
 Person(s) receiving communication: Pat Krue

Detailed substantive description of content of communication:  
(Attach a copy of the complete text of any written material received.)

Applicants agent indicated that both the City of Dana Point and the County of Orange were in total agreement with the Revised Findings that were prepared and recommended by the CC Staff. Representative also indicated that the Implementing Action Plan was tentatively to be scheduled for Commission hearing later this calendar year.

6/7/10  
Date

  
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

W 18a & W 20a

**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**

**Date and time of communication:**  
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

June 2, 2010, 2:00 p.m.

**Location of communication:**  
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Phone Call

**Person(s) initiating communication:**

Dave Neish

**Person(s) receiving communication:**

Commissioner Bonnie Neely

**Name or description of project:**

June Agenda Items W18a and 20a – City of Dana Point LCP Amendment No. DPT-MAJ-1-08 Certification Review and Revised Findings. Orange County.

**Detailed substantive description of content of communication:**  
(If communication included written material, attach a copy of the complete text of the written material.)

Mr. Neish gave background information on the project. They concur with Staff's recommendation.

Date: June 2, 2010

  
Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

W18a & W20a

**Fernie Sy**

**From:** Bruce Heyman [bruceheyman@cox.net]  
**Sent:** Thursday, June 03, 2010 11:09 AM  
**To:** Ester Sanchez  
**Cc:** Teresa Henry; Karl Schwing; Fernie Sy; Sherilyn Sarb; Peter Douglas; B4DPH Leadership  
**Subject:** Dana Point Harbor LUP: W18a & W20A 6.9.2010 in Marina Del Rey

The purpose of this letter is bring to your attention what we believe is an inconsistency between the Motion that you initiated and the revised findings. From the transcripts included with the staff report for item W20A (emphases added):

Exhibit #1, p 55 of 79, line 12:

[ MOTION ]

COMMISSIONER SANCHEZ: Okay, I would like to offer an amendment that would address the height, that the height of the structure shall be consistent with the community character of the area.

Also include in the same staff report (attached to this letter) is our observation that the policies set forth by the revised findings, final Land Use Plan, still reflect exactly the same building heights as before your approved amendment. The proposed building heights are well above those throughout the City of Dana Point. We believe that this inconsistency will create significant loss of efficiency for the Commission, public and applicant as we move into the permitting phase.

The final language in the LUP (8.5.1-3, as included in item W18A):

Buildings, excluding the dry stack storage building, need to be consistent with the character of the area.

We would like to suggest that this wording is ambiguous, and not consistent with your intent, as the word "height" does not appear. We are requesting the opportunity to discuss this with you via ex parte communications in advance of next Wednesday June 9, 2010's meeting. We are available to discuss on the phone or in your office.

Respectfully

Bruce Heyman  
 For: Boaters for Dana Point Harbor  
Bruceheyman@cox.net  
 949-289-8400

Boaters for Dana Point Harbor is a volunteer organization that has secured over 840 unique signatures from boaters and community members asking for the Revitalization to proceed without loss of recreational resources.

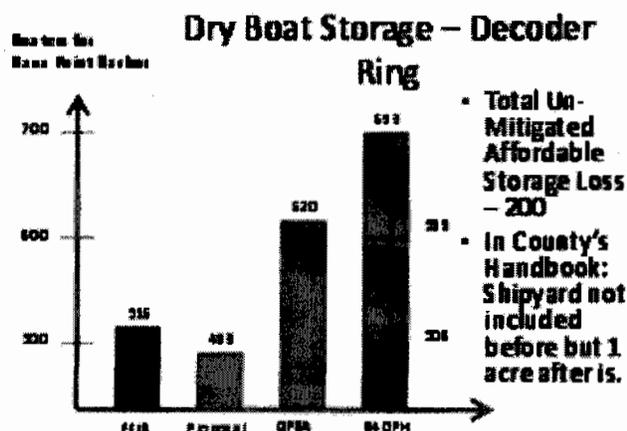
W20a

Ferne Sy

**From:** Bruce Heyman [bruceheyman@cox.net]  
**Sent:** Thursday, June 03, 2010 11:07 AM  
**To:** Steve Blank; Sara Wan; William A. Burke; Patrick Kruer; Bonnie Neely; Ross Mirkarimi; Mark W. Stone; Khatchik Achadjian; Ester Sanchez  
**Cc:** Teresa Henry; Karl Schwing; Ferne Sy; Sherilyn Sarb; Peter Douglas; B4DPH Leadership  
**Subject:** Revised Finding - Dana Point Harbor 6.9.2010 W20a  
**Attachments:** image001.wmz; oledata.mso; Dry Boat Storage 6.9.2010.pdf  
**To:** All Commissioners and alternates  
**CC:** Coastal Commission Staff

Subject: Dry Boat Storage – Staff Report vs. Land Use Plan Policies

We believe that staff has accurately made the proper findings of fact with reference to the Dana Point Harbor LUP with the exception of those that deal with the protection of Dry Boat Storage within the Harbor (excerpt next page). Staff observes that the County's number of 516 does not take into account all of the dry boat storage within Planning area 1 yet contrasts that with the approved by the Commission of 493. Staff observes that the resulting loss of approximately 23 is "does constitute a significant loss." While we believe that Chapter 3 does not support the loss of any protected uses in favor of lower uses, we feel the findings of fact grossly understate the magnitude of the loss.



This slide which we presented during the hearing shows that the additional areas within planning area 1 bring the total dry boat storage spaces to 693 which lead to a very substantial loss of 190 boats or a 27% reduction. We are disappointed that the applicant has chosen to not accurately reflect the number of dry boat storage locations within planning area one and we are disappointed that they chose to exclude the shipyard acre in the before scenario yet include it in the after as it is used for boat storage in both cases. We feel that during the hearing the applicant leveraged an

incorrectly performed dry boat storage survey (counted boats, not storage locations) by the Dana Point Boaters Association. As the hearing is over and we understand that it would be inappropriate to bring the topic up for debate next Wednesday, we feel it is inaccurate for the Findings of Fact to reflect that dry boat storage is not experiencing a significant loss. We kindly request that the findings of fact correctly state that over a fourth of dry boat storage will be eliminated within the harbor to facilitate the commercial intensification.

We respectfully request the opportunity to discuss this issue with you in advance of next Wednesday's, June 9, 2010 hearing.

Sincerely

Bruce Heyman  
 For: Boaters for Dana Point Harbor  
[Bruceheyman@cox.net](mailto:Bruceheyman@cox.net)

6/8/2010

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From Staff Report 6.9.2010 W20A p.42 (emphasis added):

According to the County, there are presently approximately 516 spaces for surface dry boat storage in Planning Area 1 (not including some additional area that is occupied by stored boats in the boat launch parking area and in the existing shipyard leasehold). In addition there are 334 spaces in a 5.7 acre area to park vehicles with boat trailers which are used once the boater has launched their boat at the adjacent boat launch ramp. A significant loss of dry boat storage spaces, coupled with a significant loss of in-water small boat slips, as well as any significant loss of vehicle with trailer parking spaces which support use of the boat launch ramp, would discourage recreational boating opportunities serving the general public which is a high priority use under the Coastal Act. Therefore, Policy 4.2.2-10 as recommended by the suggested modifications, is intended to protect area to store at least 493 boats in dry storage since a significant loss of this capacity would be inconsistent with the Coastal Act requirement to encourage recreational boating and would also adversely impact public access. If only 493 boat storage spaces were provided this would result in **a loss of about 23 dry boat as[sic] storage spaces, but that number does not constitute a significant loss.** Furthermore, the policy requires the protection and expansion of the 5.7 acre parking area for vehicles with trailers which support use of the boat launch ramp which is also a high priority use under the Coastal Act. Additionally, Policy 4.4.1-3 requires that the existing 334 boat trailer parking spaces be retained for use of the boat launch ramp facility.

**CALIFORNIA COASTAL COMMISSION**

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

**W 20a**

Staff: Fernie Sy—Long Beach  
Staff Report: May 26, 2010  
Hearing Date: June 9-11, 2010

**STAFF REPORT: REVISED FINDINGS****LCP AMENDMENT REQUEST NO.:**

DPT-MAJ-1-08

**APPLICANT:**

City of Dana Point

**PROJECT LOCATION:**

Dana Point Harbor, City of Dana Point (Orange County)

**PROJECT DESCRIPTION:**

Major Amendment Request No. 1-08 to the City of Dana Point Certified Local Coastal Program (For Public Hearing and Commission Action at the October 2009 meeting in Oceanside)

**DATE OF COMMISSION ACTION:**

October 8, 2009

**COMMISSIONERS ON PREVAILING SIDE:**

Commissioners Achadjian, Burke, Clark, Kram, Krueer, Mirkarimi, Sanchez, Shallenberger, Stone, Wan, and Neely.

**OCTOBER 9, 2009 COMMISSION HEARING: COMMISSION REVISIONS TO THE SUGGESTED MODIFICATIONS**

**Major Amendment Request No. 1-08 was heard by the Commission at its October 8, 2009 Hearing in Oceanside. At the hearing, the Commission required revisions to certain Suggested Modifications in order to bring the policies into conformance with the applicable Chapter 3 policies of the Coastal Act. The major revisions included, but were not limited to: storage of hand launch vessels shall be located close to hand launch areas as feasible (Policy 4.2.1-2 and Policy 6.3.1-6); priority shall be given to the provision of slips that accommodate boats less than 25 feet in length in the redevelopment of the harbor (Policy 4.2.2-6); there shall be no net loss of the existing 334 boat trailer parking spaces in the existing public boat launch ramp facility (Policy 4.4.1-3); clarified that while evaluations of the trees located throughout Dana Point Harbor concluded that the trees do not rise to the level of ESHA, they do provide important habitat which should be protected (Policy 7.1.2-2); include the protection of the habitat of owls and raptors in the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, nesting habitat of bird species listed pursuant to the federal of California Endangered Species Acts, California bird species of special concern and wading birds (herons and egrets) (Policy 7.1.2-2, Policy 7.1.2-3, and Policy 7.1.2-4); prohibition of the use of rodenticides containing anticoagulant**

**compounds (Policy 7.3.1-16); and any proposed buildings, excluding the dry stack storage building, need to be consistent with the character of the area (Policy 8.5.1-3).**

### **SUMMARY OF LCP AMENDMENT REQUEST NO. 1-08**

The City of Dana Point presently has two groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated that still apply to the central geographic area of the City. The central geographic area is generally located between Monarch Beach to the north and Capistrano Beach to the south, including the Dana Point Harbor area that is the subject of the proposed LCP Amendment. These older documents have generally been referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development Conservation Plan, and the Dana Point Town Center plan which apply to those areas of the City that are not covered by the 1986 LCP. These more recent documents are referred to as the '1996' LCP<sup>1</sup>.

In the proposed City of Dana Point Amendment request, the City proposes to amend the Local Coastal Program Land Use Plan to incorporate the proposed Dana Point Harbor Revitalization Plan (replacing those sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP), that would establish new land use designations and boundaries throughout the harbor; expand allowable development by approximately 153,000 square feet (all uses) including commercial development (+7,300 square feet retail/+35,000 square feet restaurant), enlarged hotel (136 rooms to 220 rooms) plus conference facilities, new marine retail (9,100 square feet), among other expanded uses; change parking requirements; reduce space allocated for surface boat storage; and change height limits to allow for 65 ft. high dry stack storage building for 400 boats and up to 60 ft. high commercial buildings. The area to which this new revitalization plan applies is entirely public tidelands<sup>2</sup>.

The City's submittal of the Dana Point Harbor Revitalization Plan also includes an Implementation Plan (IP) component. However, that component will be reviewed by the Commission at a later date. Therefore, only the Land Use Plan (LUP) of the Dana Point Harbor Revitalization Plan is before the Commission at the October 2009 hearing. This staff report will analyze the LUP component only.

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<sup>1</sup> Although this is now a misnomer because the Headlands Development Conservation Plan and the Dana Point Town Center plan were adopted after 1996.

<sup>2</sup> Coastal permit jurisdiction over the filled portion of the tidelands was delegated to the City pursuant to Section 30613 of the Coastal Act. The unfilled portions (i.e. the water) remain in the Commission's original coastal development permit jurisdiction.

The major issues raised by this amendment request are 1) the protection of two existing parks (a linear park located along the main channel on the island and a second existing park located at the southern end of Puerto Place) with the appropriate Recreation land use designation; 2) the proposed allowance of a 9,100 sq. ft. free standing Marine Retail Building and associated parking within the Marine Service Commercial land use area, an area that is currently used for higher priority dry boat storage and public boat launch vehicle parking; 3) the expansion of existing and potential construction of additional private (membership) yacht clubs on tidelands; 4) a net reduction in the number of boat slips (approximately 200), including a reduction of approximately 300 slips under 30 ft in length and the need to ensure that the loss of in-water slips is tied to the provision of dry boat storage within the Harbor; 5) the potential that the reduction in the boater parking ratio from 0.75 to 0.60 parking spaces per boat slip may adversely effect recreational boating use; 6) the need to ensure that the new visitor-serving commercial area (Commercial Core) uses are incidental to the coastal-dependent and coastal-related boating, boating support and water oriented recreational uses; 7) assessment of the need to provide for non-vehicular transit (seasonal water taxi, shuttle service and Tri-City Trolley) to and within the Dana Point Harbor; 8) the need to establish a tree trimming policy to protect nesting herons and egrets ***as well as owls and raptors***, within the Harbor; and 9) preservation of the existing lower cost overnight visitor accommodations (Marina Inn) and the prohibition of conversion of the facility to Limited Use Overnight Visitor Accommodations (LUOVA) on public tidelands.

### **ANTICIPATED AREAS OF CONTROVERSY BETWEEN THE PUBLIC, COUNTY/CITY AND COMMISSION**

#### County/City

Commission and County/City staff had been working together to produce a Land Use Plan that was acceptable to all parties for the June Commission meeting. There were a number of issues where the County/City staff and Commission staff disagreed, but basically found common ground through the modifications suggested by Commission staff and made in the addendum and at the June hearing prior to its postponement by the Commission. Changes have been made to several of the suggested modifications since the June hearing as indicated in the chart at the beginning of the staff recommended suggested modifications (Exhibit 17). Although Commission and County/City staff have met several times since the June postponement, we were not able to meet again after finalizing the suggested modifications to determine areas of remaining disagreement, if any. However, there still remain issues that members of the public disagree with concerning the County/City original submittal and as modified herein. The following is a summary of the areas of controversy between the County/City and Commission staff and some segments of the public regarding the proposed Land Use Plan as modified by the suggested modifications as originally recommended by staff at the June Commission meeting and as subsequently further modified.

### Boat Slips

The Dana Point Harbor Revitalization Plan allows for the reconstruction and net reduction in the number of slips in the east and west marinas. As originally proposed, there would have been a net loss of approximately 480 of the 2,409 existing slips and a reduction of approximately 1,100 slips under 30 ft. in length. Concerns have been raised by the some public members about the loss of smaller slips. Following the Commission's postponement of action on the LUP Amendment in June the County/City held additional public meetings on the marina alternatives and have chosen an alternative which reduces the slips under 30 ft. by 23% instead of the previous proposal of approximately 80%. A policy has been added to the LUP suggested modifications that makes the harbor improvements goal of no net loss of slips, if feasible (Policy 4.2.2-6, page I-4.5, Ex. 17) but would allow a maximum loss of 155 slips if no net loss is found to be infeasible. Small slip loss is primarily controlled by **giving priority to the provision of slips that accommodate boats less than 25 feet in length and also by** requiring that the average slip length of the reconstructed harbor not exceed 32 ft. The existing average slip length is 30 ft. However, Policy 4.2.2-10 (page I-4.5, Ex. 17) also requires that the existing boat slips be maintained until a coastal development permit is issued by the Commission that addresses impacts to boating due to any loss of slips, including small slips, and whether the dry stack boat storage facility, with a capacity to hold 400 boats, is constructed and is operational within the Harbor, in order to protect boating opportunities for the smaller boats. Additionally, policies have been added that require that the proposed Marine Service Commercial (MSC) Area be used to increase the number and sizes of public boat launching parking spaces **while retaining the existing 334 boat trailer parking spaces,** the provision of a minimum of 93 mast-up surface boat storage spaces as well as the provision of additional surface boat storage area to help mitigate the loss of small in-water slips and that a planned stand alone marine retail store be eliminated from the MSC area to accomplish this (Policy 4.2.2-10, page I-4.5, Ex. 17).

### Parking Ratio for Boat Slips and Commercial Core Parking

The Dana Point Harbor Revitalization Plan would allow a 0.6 parking ratio per boat slip. A parking ratio of 0.75 parking spaces per slip is currently being used in other LA and Orange County harbors. Prior to 1980, Dana Point Harbor required 0.75 parking spaces for each slip up to 30 ft. in size; 1.2 spaces per slip 30 ft. to less than 45 ft. and 1.6 parking spaces per slip 45 ft and greater. The County/City justifies the proposed reduced boater parking rate based on Department of Boating and Waterway guidelines, a 1996 study that indicated that Dana Point's parking ratios were higher than other marinas at that time, and a summer 2006 parking survey that found that there would be adequate boater parking, even during peak summer weekends (except for major holiday weekends), if the ratio were lowered to 0.60 spaces per slip. Concerns from the public have been raised that a 0.6 parking ratio is being proposed to allow the development of the Commercial Core visitor-serving commercial development, which they see as a lower priority use. Commission staff supports the reduction in the boater parking ratio based on the information submitted by the County/City showing that the reduced parking ratio is adequate to meet the existing and future boater parking demand and the requirement that the Commercial Core

development provide parking for its use. Further, the County/City is required to assess the need for implementation of non-automobile transit services (water taxi, shuttle and Tri-City Trolley) should parking become a problem. Additionally, boaters are concerned with the County/City proposed policy that would allow boater parking up to 1,000 ft. from the docks they serve. Policy 6.2.5-6, (page I-6.13, Ex. 17) reduces the maximum distance to 600 ft. and encourages boater parking spaces to be located within 300 ft. of the docks.

*Commercial Core Development versus Higher Priority Uses (i.e. Boat Slips, Boat Launch Parking, Surface Boat Storage, Shipyard)*

The Dana Point Harbor Revitalization Plan would allow a new Visitor Serving Commercial area (the Commercial Core) that includes intensification of the existing retail and restaurant development. Concerns from the public have been raised that this new Commercial Core comes at the expense of dry boat storage and vehicle and trailer parking for use of the existing public boat launch facility, which are higher priority uses under the Coastal Act. Policies have been added to the LUP that will ensure that sufficient land area and parking for higher priority uses (e.g. boat slips, boat launch, and dry boat storage) is provided prior to construction of the new commercial development (Policies 4.2.2-9 and 4.2.2-10 (page I-4.5, Ex. 17), **Policy 4.4.1-3 (page I-4.8, Ex. 17)** and 5.1.1-7 through 5.1.1-9 (page I-5.2, Ex. 17). Therefore, the higher priority uses are protected. Currently there is a shipyard within the Harbor operating within a 2.6ac lease area. However, the shipyard operator has historically used only 1.2 acres for shipyard operations with parking on another 0.4 acres. The remaining acre has been historically used for dry boat storage. The County/City wants to reduce the shipyard land use area to 1.6 ac and has presented information indicating that 1.6 acres is adequate for a viable shipyard, even with a reconfigured marina with the larger boats that were being proposed when the LUP amendment was before the Commission in June. At the time of the June hearing the County/City proposed Harbor slip mix included an increase in the larger slips and a significant reduction in the smaller slips. The 30-34 ft. slips were proposed to increase by 312 slips; the 35-39 ft. slips by 263; the 40-44' slips by 80; the 50-54' and 55-59' slips were both going to be decreased and the 60' and over slips were going to be increased by 29 slips. However, under currently proposed County/City chosen Alternative 3.50, the greatest increase in slips (66) would occur in slips 30-34' in length. Slips 35' to 49' are being increased by a total of only 55 and slips 50' and over are all being decreased (Ex. 21). The current shipyard lessee wants to retain the shipyard lease area at 2.6 acres, stating that the entire area is needed to maneuver and properly service the larger boats that will be moored in the Harbor under the proposed reconfiguration. The LUP as modified by Policy 4.2.2-9 (page I-4.5, Ex.17) would require the County/City to retain a shipyard on a minimum of 1.6 acres, but would allow for a larger facility since a shipyard is an allowable use in the MSC land use designation if the demand for a larger facility is demonstrated.

*Visual Resources*

The public has raised concerns regarding the impacts upon visual resources by the buildings allowed by the Dana Point Harbor Revitalization Plan. Views of the Dana Point

Harbor area from Pacific Coast Highway (PCH) are limited as a result of development on and along the coastal bluffs. However, there are a variety of public vantage points from Doheny State Beach, the bluffs surrounding the harbor and from other public areas, such as Street of Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point. Anticipated development will have some impacts upon views from those areas, but those impacts will not be significant. In order to assure that no significant view impacts occur, several policies have been provided in the LUP, such as ensuring development within designated and proposed scenic corridors is compatible with scenic enhancement and preservation and shall not significantly impact views through these corridors; including a graphic that depicts the view corridors found within the harbor; protecting and enhancing public views through open space designations and innovative design techniques, **and** limiting the heights of anticipated buildings within the harbor **and requiring that any proposed buildings, excluding the dry stack storage, be consistent with the character of the area.** These policies ensure that significant coastal public views through scenic corridors and from scenic viewpoints will be protected and enhanced.

Staff is recommending **denial** of the LUP Amendment as submitted, and **approval** of the LUP Amendment with suggested modifications.

**EXHIBITS TO THE REVISED FINDINGS)**

- 1) Partial Transcript (Commissioner Discussion) of the October 8, 2009 Commission Hearing**
- 2) Suggested Modifications Revised at the October 8, 2009 Commission Hearing**
- 3) Boaters for Dana Point Harbor Letter dated February 19, 2010**

**EXHIBITS (FOUND IN THE ORIGINAL STAFF REPORT)**

- 1) Location Map
- 2) Dana Point City Council Resolution No. 06-09-13-06
- 3) Dana Point City Council Ordinance No. 06-08
- 4) Letter from the City of Dana Point dated November 7, 2007
- 5) EIR Table 3-1 Existing and Proposed Land Use Summary
- 6) Existing Conditions Site Map
- 7) Planning Area Map
- 8) Land Use Plan Map
- 9) Current Anchor Marine Lease Boundary 2.6 Acres Map
- 10) Dana Point Harbor Existing and Proposed Acreages Table
- 11) Letter from California State Lands Commission dated January 13, 2009
- 12) Letter from Nossaman, LLP dated May 8, 2009
- 13) Letter from the City of Dana Point dated May 22, 2009
- 14) LSA Map of Southern Portion of Planning Area 1
- 15) Boaters for Dana Point Petition dated May 22, 2009
- 16) Dana Point Harbor Revitalization Plan and District Regulations dated September 2006

Dana Point LCPA 1-08  
Revised Findings  
Page 7 of 67

- 17) Dana Point Harbor Revitalization Plan Land Use Plan Component dated May 2009
- 18) Dana Point Harbor Parking Zones/Requirements Information (Existing and Proposed)
- 19) Dana Point Harbor Parking Zones/Requirements Graphic Showing Both Existing and Proposed Parking
- 20) Dana Point Harbor Alternative 3.50 Proposed Slip Layout Graphic
- 21) Dana Point Harbor Alternative 3.50 Chart Comparing Existing and Proposed Slip Layout
- 22) Dana Point Harbor Alternative 3.50 Chart Comparing Existing and Proposed Slip Layout by Specific Slip Length
- 23) Dana Point Harbor View Corridors
- 24) Dana Point Harbor Now Letter dated September 10, 2009
- 25) Dana Point Harbor Now Letter dated September 14, 2009
- 26) Dana West Yacht Club Letter dated July 23, 2009
- 27) Dana West Yacht Club Letter dated July 23, 2009
- 28) Dana Point Boaters Association (Steven Alan Fry) email dated September 10, 2009
- 29) Dana Point Boaters Association letter dated September 10, 2009
- 30) Boaters for Dana Point Suggested Modifications Comments
- 31) Boaters for Dana Point: Possible Additional Wet Slips in Dana Point Harbor Information
- 32) Boaters for Dana Point Petition
- 33) Boaters for Dana Point email dated September 15, 2009
- 34) Ex-Partes from Commissioners
- 35) Letters Received from the Public
- 36) Emails Received from the Public
- 37) Dana Point Harbor Boater Parking Peak Occupancy Summer 2006
- 38) Reference Note Regarding Previous Email and Correspondence in Conjunction with the Previous Scheduled Hearing that took place in June 2009 in Marina Del Rey.

**SUBSTANTIVE FILE DOCUMENTS:** Channel Islands PWP Amendment 1-07; CDP No. 5-08-187-[Long Beach]; California Coastal Commission Condominium-Hotel Workshop Staff Report dated August 2006; San Diego Unified Port District Port Master Plan Amendment No. 39 (Woodfin Suites Timeshare/Hotel); HNB-MAJ-2-06-[Huntington Beach-Timeshares]; San Diego Unified Port District Port District A-6-PSD-8-04/101 (Lane Field); A-5-RPV-2-324-[Long Point]; NPB-MAJ-1-06A-[Newport Beach]; NPB-MAJ-1-04-[Newport Beach].

**STANDARD OF REVIEW**

The standard of review for the proposed Amendment to the LCP-Land Use Plan is consistency with the Chapter 3 policies of the Coastal Act.

**SUMMARY OF PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states:

During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

The City Planning Commission held a public hearing for the proposed LCP Amendment on June 7, 2006 and June 21, 2006, and the City Council held a public hearing for the proposed LCP Amendment on September 13, 2006, and September 27, 2006. This LCP Amendment request is consistent with the submittal requirements of the Coastal Act and the regulations that govern such proposals (see, e.g., Sections 30501, 30510, and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations).

In a letter dated August 4, 2009, Commission staff invited the Department of Boating and Waterways to review the proposed LCPA. The letter requested that if the Department of Boating and Waterways intends to provide comments, that it do so with 30 days of receipt of the letter. No comments were received from that public agency.

### **ADDITIONAL INFORMATION**

Copies of the staff report are available on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov) and at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Fernie Sy in the Long Beach office at (562) 590-5071. The City of Dana Point contact for this LCP Amendment is Kyle Butterwick, Director of Community Development, who can be reached at (949) 248-3560.

## **I. STAFF RECOMMENDATION**

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

### **MOTION:**

*I move that the Commission adopt the revised findings in support of the Commission's action on October 8, 2009 concerning Major Amendment Request No. 1-08.*

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side who are also present at the October 2009 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners eligible to Vote on Revised Findings for Major Amendment Request No. 1-08 are: Achadjian, Burke, Clark, Kram, Kruer, Mirkarimi, Sanchez, Shallenberger, Stone, Wan, and Neely.

**RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for its approval of Major Amendment Request No. 1-08 on the ground that the findings support the Commission's decision made on October 8, 2009 and accurately reflect the reasons for it.

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**II. SUGGESTED MODIFICATIONS**

Certification of City of Dana Point LCP Amendment Request No. 1-08 is subject to the Suggested Modifications contained in Exhibit #17 (see separate attachment to the staff report). After the Land Use Plan document was originally submitted in September 2006 (Exhibit #16), the City subsequently submitted a "supplemental text" in November 2007 that they stated provided a "more traditional" approach to presenting the Land Use Plan. Furthermore, the City stated that all of the information found within the "supplemental text" was consistent with that considered by the Dana Point City Council in their deliberations on the Dana Point Harbor Revitalization (Exhibit #4). In addition, the City states that the goals and policies in the document have been directly taken from several different approval documents, all which have been previously certified by the Coastal Commission as components of the City's certified LCP. The County/City and Commission have worked together using this "supplemental text" with the goal of developing a Land Use Plan document that all parties could accept. Exhibit #17 contains the Suggested Modifications that Commission staff has developed with assistance from the County/City utilizing what has been submitted by the City/County as a base document. Upon receipt of the final document as revised by Commission staff, the City/County will indicate if there are remaining areas of disagreement.

### **III. FINDINGS**

The following findings support the Commission's denial of the proposed LCP Amendment as submitted and approval if modified as suggested by staff. The Commission hereby finds and declares as follows:

#### **A. PROJECT LOCATION AND AMENDMENT DESCRIPTION**

##### **1. Project Location**

Dana Point Harbor is approximately 276.8 acres, owned and operated by the County of Orange and located entirely in the southern portion of the City of Dana Point (Exhibit #1 and #6). The Harbor is bordered by the Pacific Ocean to the south, Dana Point Headlands and the Old Cove Marine Life Preserve to the west, Doheny State Beach to the east and a variety of commercial, hotel, residential and public park uses to the north. Vehicular access to the Harbor is provided by Dana Point Harbor Drive, Street of the Golden Lantern and secondary access via Cove Road. Dana Point Harbor is a man-made County of Orange regional recreational facility built in a cove formed by the headlands of Dana Point to the north in Capistrano Bay. The Harbor is constructed entirely on State tidelands that were granted to the County of Orange. The subject Revitalization Plan applies only to filled and unfilled tidelands; there are no non-tidelands within the subject LCP area. Although the uplands are filled tidelands and would normally be under the Commission's jurisdiction, the Commission has delegated to the City permit authority for the filled tidelands pursuant to Section 30613 of the Coastal Act. The Commission retains original coastal development permit jurisdiction over unfilled tidelands. The Harbor construction was completed in the early 1970's and with the exception of the Dana Wharf buildings, routine maintenance and some other minor improvements, the County has not remodeled or constructed any new facilities since that time. Beginning in the late 1990's, planning for the Harbor's revitalization began.

##### **1. Land Use Plan (LUP) Amendment**

In the proposed City of Dana Point LCP Amendment request, the City proposes to amend the Local Coastal Program Land Use Plan to incorporate the proposed Dana Point Harbor Revitalization Plan (replacing sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP), that would establish new land use designations and boundaries throughout the harbor; expand allowable development by approximately 153,000 square feet (all uses) including commercial development (+7,300 square feet retail/+35,000 square feet restaurant), enlarged hotel (136 rooms to 220 rooms) plus conference facilities, new marine retail (9,100 square feet), among other expanded uses; change parking requirements; reduce space allocated for surface boat storage; and change height limit to allow for 65 ft. tall dry stack storage building for 400 boats and up to 60 ft. tall commercial buildings (Exhibit #5). Existing and proposed acreages by use category are listed in Exhibit #10. Proposed LCP Amendment Request No. 1-08 was submitted for Commission certification by City Council Resolution No. 06-09-13-06, which has been

included as Exhibit #2. In addition, Ordinance No. 06-08 approving the change to the Dana Point Specific Plan and Zoning Code has been included as Exhibit #3.

Because the Dana Point Harbor Revitalization Plan would allow extensive renovations to the facilities located throughout the Harbor, particularly in the anticipated Commercial Core area (to be discussed later), the City states that the currently used regulations no longer satisfy the purpose for which they were intended. The Dana Point Harbor Revitalization Plan (Land Use Plan-LUP) when included as part of the City General Plan and Zoning Code will constitute the LCP for the Dana Point Harbor area of the City of Dana Point. Upon approval, the Dana Point Harbor Revitalization Plan (LUP) Amendment, including the land use configurations depicted within the Dana Point Harbor Revitalization Plan, will replace, in its entirety, the previously certified Land Use Plan (1986 LCP) relative to the harbor, existing zoning ordinance and design guidelines with a comprehensive boundary and a current land use plan to regulate existing and future land uses throughout the Harbor.

The City states that the Dana Point Harbor Revitalization Plan will provide a unique blend of natural and man-made facilities that include visitor/recreation, commercial, community facilities and open space land uses. A major emphasis of the plan is the replacement/remodeling of existing retail and restaurant establishments and the upgrading of boater service facilities to meet present day Building Code standards. Ultimately, the City believes that the plan will provide a comprehensive approach to improving access to the coastal resources by creating additional opportunities for visitors and local residents including pedestrian scale buildings, boater and marina facilities, with improvements in vehicular and pedestrian circulation that will encourage the future use and enjoyment of the Harbors amenities.

The Dana Point Revitalization Plan will allow a new Commercial Core (the northerly portion of Planning Area 1-consisting of "Marine Service Commercial" uses and Planning Area 2-consisting of "Day Use Commercial" uses, that includes the replacement and/or remodeling of all existing retail and restaurant buildings (Exhibits #7-8).

The LUP Amendment includes areas outside of the new Commercial Core that consist of the following uses: Planning Area 3-Visitor Serving Commercial; Planning Area 4-Marine Commercial; Planning Area 5-Recreation; Planning Area 6-Educational/Institutional; Planning Area 7-Conservation; Planning Areas 8, 9, 10, 11 and 12-Educational Basin, - West and East Marinas, and Marine Services and Harbor Entrance (Exhibits #7-8). Planning Areas 1 through 7 are located on the landside of the harbor and Planning Areas 8 through 12 are located on the waterside of the harbor. The uses for these areas that were originally proposed by the City are detailed in Chapter 1, Exhibit #16. The uses, as changed by the suggested modifications, can be found in Chapter 2, Exhibit #17.

This LCP Amendment will only serve as a planning document and will not approve any specific project components. Subsequent Coastal Development Permits (CDP's) from the City will be necessary to approve any project components to carry out the County/City's vision of the revitalization plan. The submitted LCPA is a project driven LCPA, as

significant planning has already taken place in anticipation of approval of the LCPA and then immediate processing of permits for development of the County/City's anticipated project components.

A project level EIR (Environmental Impact Report) has been completed for what is anticipated as Phase 1, which consists of the northerly portion of Planning Area 1-Marine Service Commercial uses and Planning Area 2-Day-Use Commercial uses, collectively called the Commercial Core area of the harbor. A programmatic level EIR has been completed for what is anticipated as Phase 2 to take place within the remaining areas of the harbor (Planning Areas 3-12).

Phase 1 will take approximately 5 to 20 years to complete and Phase 2 is anticipated to take place after funding sources have been obtained as well as jurisdictional approvals.

## **B. LAND USE PLAN AMENDMENT**

### **1. DENIAL of the LUP Amendment as Submitted**

The standard of review for Amendments to a certified Land Use Plan is consistency with the policies of Chapter 3 of the Coastal Act. The Commission may require conformity with Chapter 3 only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

The Dana Point Harbor Revitalization Plan document originally submitted by the City (dated September 2006) purports to contain the Land Use Plan Amendment for the Dana Point Harbor. Chapter 1 of the document is identified as the Land Use Plan Amendment and contains a narrative description of twelve (12) Planning Areas; a narrative description of 'design themes' including architecture and landscaping; a narrative description of infrastructure and utility improvements; and finally a narrative description of construction phasing. While this chapter provides a narrative about these Planning Areas, this chapter fails to identify the allowable land use designations typically accompanied with an LUP.

Chapter 2 is identified as Coastal Act Consistency and provides narrative description of various issue areas such as 'resource protection'; 'circulation and access'; 'public recreation'; 'marine environment'; among others. Each of these sections identifies Coastal Act policies followed by a narrative analysis of consistency with the identified Coastal Act policies. It's unclear if Chapter 2 is part of the Land Use Plan Amendment. In addition, the narrative does not include policies or requirements to ensure that Coastal Act policies are carried out.

Furthermore, except for Exhibit 1-1 in the Land Use Plan Amendment, there are no other exhibits identifying important resource areas, public access and recreation areas, among other exhibits that would be typical within a Land Use Plan. There are also a number of Coastal Act issues that need to be addressed in an LUP that

are not addressed such as the fill of coastal waters, hazards (e.g. flooding, tsunami, erosion, sea level rise, etc.), avoidance/minimization of protective devices, protection of marine resources (e.g. eelgrass), scenic resources including important landforms, and public view points, corridors, etc., just to identify a few. Thus, the Commission has determined that this Land Use Plan Amendment document would not function as a policy document by which the City could review development proposals. Thus, as detailed more fully below, the Commission must deny the proposed land use plan amendment as submitted as it does not contain sufficient policies or standards by which to carry out the requirements of Chapter 3 of the Coastal Act.

**a. Tidelands and Submerged Lands**

Section 30213 of the Coastal Act states:

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

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30224 of the Coastal Act states:

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-*

*dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234 of the Coastal Act states:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

The protection of Tidelands and Submerged Lands is an important aspect of the Coastal Act. Section 30213 of the Coastal Act states, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30220 of the Coastal Act states, in part, that coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use. Section 30221 of the Coastal Act states, in part, that oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. Section 30224 of the Coastal Act states, in part, that increased recreational boating use of coastal waters shall be encouraged and that non-water-dependent land uses shall be limited. Section 30234 of the Coastal Act states, in part, that facilities that serve commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Tidelands and submerged lands are subject to a public trust that, among other things, limits their use to navigation, fishing, public access, water-oriented recreation, open space and environmental protection, and incidental commercial use, which are uses that are highly regarded in the Coastal Act. Thus, these lands must be protected in order to protect the general public's use of these areas to gain access to and enjoy the coast.

Protection of Tidelands and Submerged Lands should be a primary goal associated with any LUP. However, the proposed LUP Amendment does not provide policies to protect Tidelands and Submerged Lands. Therefore, the submitted Dana Point Harbor Revitalization Plan is inconsistent with Sections 30213, 30220, 30221, 30224 and 30234 of the Coastal Act because it fails to provide policies that would protect Tidelands and Submerged Lands. Therefore, the LUP Amendment must be denied as submitted.

**b. Coastal-Dependent/Related Development**

Section 30213 of the Coastal Act states:

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

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223 of the Coastal Act states:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30224 of the Coastal Act states, in part:

*Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.*

Section 30234 of the Coastal Act states:

*Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Section 30255 of the Coastal Act states:

*Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

The protection of Coastal-Dependent/Related Development is an important aspect of the Coastal Act. Section 30213 of the Coastal Act states, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30220 of the Coastal Act states, in part, that coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use. Section 30221 of the Coastal Act states, in part, that oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. Section 30223 of the Coastal Act states, in part, that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. Section 30224 of the Coastal Act states, in part, that increased recreational boating use of coastal waters shall be encouraged and that non-water-dependent land uses shall be limited. Section 30234 of the Coastal Act states, in part, that facilities that serve commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Section 30255 of the Coastal Act states, in part, that coastal-dependent development shall have priority over other developments on or near the shoreline. Coastal-Dependent/Related Development has priority over other development near the shoreline as stated in the Coastal Act. In addition, the Coastal Act states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided and also recreational boating uses shall be encouraged and non-water dependent uses shall be limited. The harbor provides a unique area where

such Coastal-Dependent/Related Development should be located. This in turn provides opportunities for the general public to enjoy the coast.

Protection of Coastal-Dependent/Related Development should be a primary goal associated with any LUP. However, the proposed LUP Amendment does not provide policies to protect Coastal-Dependent/Related Development. Therefore, the submitted Dana Point Harbor Revitalization Plan is inconsistent with Sections 30213, 30220, 30221, 30223, 30224, 30234, and 30255 of the Coastal Act because it fails to provide policies that would protect Coastal-Dependent/Related Development. Therefore, the LUP Amendment must be denied as submitted.

**c. Visitor-Serving Commercial Development**

Section 30213 of the Coastal Act states:

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

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30223 of the Coastal Act states:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Section 30250 of the Coastal Act states:

*Visitor-Serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

The protection of Visitor-Serving Commercial Development is an important aspect of the Coastal Act. Section 30213 of the Coastal Act states, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30221 of the Coastal Act states, in part, that oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. Section 30222 of the Coastal Act states, in part, that the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry. Section 30223 of the Coastal Act states, in part, that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. Section 30250 of the Coastal Act states, in part, that Visitor-Serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors. Visitor-Serving Commercial Development is strongly preferred under the Coastal Act. This type of use is preferred because it provides opportunities for the general public to enjoy the unique experience available only along the coast. The Dana Point Harbor is a favorable location to provide amenities that will enhance the general public's access to the coast.

Protection of Visitor-Serving Commercial Development should be a primary goal associated with any LUP. The LUP submitted by the City contains land use designations with land uses that do encourage the provision of visitor-serving development. For example, there are "Day Use Commercial" and "Visitor Serving Commercial" land use designations that encourage retail, restaurant, and visitor accommodation uses. However, except for those provisions, and various references in narrative to protecting and enhancing the visitor serving capacity of the harbor, the proposed LUP Amendment does not provide policies that are adequate to protect and enhance Visitor-Serving Commercial Development. Policies are necessary that identify the preferred location of visitor serving development in the harbor; and provide guidance as to physical design features that will enhance visitor serving function. Therefore, the submitted Dana Point Harbor Revitalization Plan is

inconsistent with Sections 30213, 30221, 30222, 30223 and 30250 of the Coastal Act because it fails to provide policies that would protect and enhance Visitor-Serving Commercial development in the coastal zone. Therefore, the LUP Amendment must be denied as submitted.

**d. Lower-Cost Overnight Accommodations**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30213 of the Coastal Act states:

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

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30255 of the Coastal Act states:

*Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.*

Pursuant to the public access policies of the Coastal Act, and particularly Section 30213, the Commission has the responsibility to ensure that a range of affordable facilities be provided in new development along the coastline of the state. The expectation of the Commission, based upon several precedents, is that developers of sites suitable for overnight accommodations will provide facilities which serve people with a range of incomes (HNB-MAJ-2-06-[Huntington Beach-Timeshares]; San Diego Unified Port District Port District A-6-PSD-8-04/101 (Lane Field); A-5-RPV-2-324-[Long Point]). If development cannot provide for a range of affordability on-site, the Commission requires off-site mitigation.

Historically, the Commission has approved new hotel developments along the coastline. However, this new development has virtually all been exclusive, higher priced resort developments. In each of those actions, though, the Commission always secured offsetting public amenities, such as new public accessways, public parking or open space dedications, to address the Coastal Act priorities for public access and visitor support facilities. In addition, the Commission has required mitigation for the loss of land that was available for lower cost and visitor serving facilities (e.g. NPB-MAJ-1-06A).

In light of current trends in the market place and along the coast, the Commission is increasingly concerned with the challenge of providing lower-cost overnight accommodations consistent with the Coastal Act. Recent research in support of a Commission workshop concerning hotel-condominiums showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower-cost. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year. State Parks estimates that demand for camping has increased 13% between 2000 and 2005. Nine of the ten most popular campgrounds are along the coast (2006 Condominium-Hotel Workshop).

In general, many low to moderately priced hotel and motel accommodations tend to be older structures that are becoming less and less economically

viable. As more recycling occurs, the stock of lower cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same low rates. As a result, the Commission sees far more proposals for higher cost accommodations than for low cost ones. The loss of affordable overnight accommodations within the coastal zone has become an emerging issue for the Commission. If this development trend continues, the stock of affordable overnight accommodations will be depleted.

In an effort to stem this tide, and to protect lower cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees when development proposes only higher cost accommodations. By doing so, a method is provided to assure that some degree of lower cost overnight accommodations will be protected. In this case, the City and OC Dana Point Harbor have requested that the Commission require the protection of the existing lower cost overnight accommodations that exist and require their replacement and/or construction of new additional lower cost units in the harbor, instead of utilizing mitigation fees.

Given the current trend of proposed developments only including high cost facilities (recreational, overnight, residential, etc.), and the added redevelopment pressure on the hotel sites that will ensue with this land use plan amendment, the City should review Land Use Plan policies for the cumulative impacts associated with these trends and their conformity with the policies of the Coastal Act.

Policies are necessary to address these issues. Therefore, the land use plan amendment, as proposed, cannot be found consistent with the Coastal Act.

**e. Limited Use Overnight Visitor Accommodations**

Presently there is an existing 136 room lower-cost hotel, known as the Marina Inn, located on filled public tidelands within the harbor. The LCP contemplates expansion of that hotel from 136 to 220 rooms, plus the addition of other amenities including conference facilities.

The provision of overnight visitor accommodations serves a significant purpose as a subset of visitor serving uses. Overnight visitor accommodations allow those who do not live within a day's drive of the coast an opportunity to enjoy coastal zone amenities when they otherwise may not be able to do so. Access to coastal recreation facilities is enhanced when there are overnight lodging facilities for all economic sectors. Those members of the public that cannot get to the coast within a day's journey, would need to travel to the coast, and then would need a place to stay overnight so that, finally reaching the coast, they don't have to turn around

and head back. However, as proposed, the LUP amendment does not recognize this important function of visitor serving facilities.

The proposed LUP amendment does not adequately address the potential consumption of land designated for visitor serving uses with timeshare-type facilities and the subsequent impacts on the stock of overnight accommodations. Timeshare-type facilities provide a lower level of public accessibility than traditional hotels and motels. Hotels on sites designated for visitor serving uses are among the higher priority commercial uses encouraged and protected by the Coastal Act. Policies must be in place to protect those uses -that are located on key visitor-serving sites- from conversion to uses, such as Limited Use Overnight Visitor Accommodations that have a lower visitor serving value.

There are numerous methods for dividing property and/or time interests within vacation accommodations and selling those interests to private individuals or entities. As the market changes, these methods also evolve. Commonly used terms for these methods include “timeshare”, “fractional ownership”, “condominium/hotel” among many others, all of which tend to be loosely defined as they are used within the industry. However, each type of timeshare proposal may necessitate different controls that must be tailored to assure that public accessibility to the facility is maximized. One step toward implementing those controls is to have clearly defined terminology. For instance, the term “timeshare” can have a specific meaning that defines a particular type of divided interest product or it can serve as a “catch-all” phrase, which can be confusing. Thus, a distinct “catch-all” phrase is necessary in the Land Use Plan. Hereinafter, within these findings, the Commission will use the phrase “Limited Use Overnight Visitor Accommodations” (or 'LUOVA') to mean any hotel, motel or other similar facility that provides overnight visitor accommodations wherein some or all of the units, rooms, lots, parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right for a specified period of time to exclusive use to all or a portion of the facility. A more detailed definition that encompasses all the possible known types of these kinds of facilities should be included in the LUP.

The current understanding of Limited Use Overnight Visitor Accommodations raises significant issues with regard to their appropriateness within visitor serving districts. As proposed, the existing Marina Inn is not explicitly protected from conversion to a Limited Use Overnight Visitor Accommodation. Thus, existing and future hotel/motel rooms available to the general public are jeopardized. This issue is not addressed in the proposed LUP amendment. The proposed LUP amendment does not adequately prioritize protection of existing overnight visitor accommodations, inconsistent with the requirements of Coastal Act Section 30222.

Furthermore, the upland areas subject to this LUP amendment are all filled public tidelands. As determined by the State Lands Commission in another case (Woodfin Suites – Port of San Diego), development of LUOVAs on public tidelands would be inconsistent with the Public Trust Doctrine and would be an inappropriate use of filled sovereign tide and submerged lands, because it would significantly impair the public's right to these trust lands which have been historically set aside for the benefit of the statewide public. If LUOVAs were proposed, they would only be available to a small segment of the population who can afford the high cost of the initial purchase and who would then own personal rights to the rooms, thereby preventing other use of these public lands. Allowing LUOVAs in the harbor on filled tidelands would not protect and promote lower-cost visitor accommodations, and could set an adverse precedent regarding the preservation of public access and lower-cost visitor-serving public accommodations in the coastal zone. Therefore, special provisions are necessary to address the protection and provision of lower-cost accommodations and to prohibit the conversion of existing or construction of new Limited Use Overnight Visitor Accommodations (e.g. condominium-hotels) on public tidelands.

Furthermore, there is no explicit prohibition on converting existing hotel/motel type establishments to lesser priority, potentially quasi-residential Limited Use Overnight Visitor Accommodations. A loss of overnight transient visitor accommodations in favor of Limited Use Overnight Visitor Accommodations is not consistent with the priority Coastal Act Sections 30255 and 30222 places on visitor serving uses.

The proposed amendment cannot be found to be consistent with Section 30255 and 30222 of the Coastal Act, which place a higher priority on visitor serving uses than on private residential or general commercial uses. Therefore, the Commission finds that the proposed amended plan is inconsistent with the Chapter 3 policies of the Coastal Act and therefore must be denied.

**f. Transit/Smart Growth**

Section 30250(a) of the Coastal Act states, in relevant part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Section 30252 of the Coastal Act states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Section 30253 of the Coastal Act states, in relevant part:

*New development shall:*

... (d) *Minimize energy consumption and vehicle miles traveled.*

The Coastal Act policies cited above address transit and the need to prioritize provision of convenient public transit and to site and design development in a manner that facilitates provision of public transit. Major coastal recreational areas should be well served by public transit and easily accessible to pedestrians and bicyclists. Street, sidewalk, bicycle path, and recreational trail networks (including the Coastal Trail) should be designed and regulated to encourage walking, bicycling, and transit ridership. Commercial and retail developments should be required to design their facilities to encourage walking, bicycling, transit ridership, and ridesharing. For example, developments could locate and design building entries that are convenient to pedestrians and transit riders. Policies need to encourage development to be designed accordingly.

The peak visitor season tends to be during summertime. During these periods, traffic congestion and inadequate parking can impact public access to the beach, bay and other coastal areas. Alternative forms of transit should be available, particularly during these time periods that provide convenient transportation to and along the beach and bay. Although the LUP does encourage the provision of shuttle service to off-site areas and includes the concept of a water taxi, the proposed LUP doesn't otherwise contain policies to specifically encourage the provision of shuttle service, particularly if and when new development creates demand for such service.

**g. Public Access and Recreation**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30212.5 of the Coastal Act states:

*Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Section 30214 of the Coastal Act states:

*In carrying out the public access policies of this article, the commission, regional commissions and other responsible public agencies shall consider and encourage the utilization of innovative access management techniques, including but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

Section 30252 of the Coastal Act states, in part:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...*

The protection, enhancement and provision of public access and recreation is an important aspect of the Coastal Act. Section 30210 of the Coastal Act states, in part, that recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 of the Coastal Act states, in part, that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212(a) of the Coastal Act states, in part, that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects. Section 30212.5 of the Coastal Act states, in part, wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area. Section 30214 of the Coastal Act states, in part, that in carrying out the public access policies of this article, the commission and other responsible public agencies shall consider and encourage the utilization of innovative access management techniques, including but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs. Section 30252 of the Coastal Act states, in part, that the location and amount of new development should maintain and enhance public access to the coast.

Public access and recreation are essential to the Coastal Act since they provide opportunities for the general public to enjoy the California coastline. The Dana Point Harbor is a favorable location to provide amenities that will enhance the general public's access to the coast. Protection of public access and recreation should be a primary goal associated with any LUP.

The LUP submitted by the City does contain a 'Circulation and Access' section that discusses in general terms how the City intends to address public access and circulation in the Harbor, mostly with an emphasis on how it will do so in the Commercial Core area. The plan also contains Coastal Act

policies regarding public access and recreation. However, the proposed LUP Amendment would delete existing public access policies relative to the harbor that are in the existing certified LUP and does not replace them. In addition, the LUP does not provide other policies sufficient to protect, enhance and provide public access and recreation in the harbor. For instance, there are no policies describing or graphics depicting existing access to be protected or enhanced/provided.

The LUP includes general policies addressing parking in the Harbor. However, specific parking standards have not been provided. Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could otherwise be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach and other visitor-serving activities in the coastal zone. A parking deficiency will therefore have an adverse impact on public access. Numeric parking standards must be provided so that they can be evaluated and found adequate under the public access policies of the Coastal Act. Approved standards must then be specifically referenced in the LUP to ensure adequate provision of on-site parking to minimize adverse impacts to public access.

**h. Coastal Resource Protection**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states:

*(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing Intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*

- (7) *Nature study, aquaculture, or similar resource-dependent activities.*

*(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*

Section 30240 of the Coastal Act states:

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

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

The protection of Coastal Resources is an important aspect of the Coastal Act. Section 30210 of the Coastal Act states, in part, that recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30230 of the Coastal Act states, in part, that marine resources shall be maintained, enhanced, and where feasible restored. Section 30231 of the Coastal Act states, in part, that the biological productivity and quality of coastal waters shall be protected. Section 30233 of the Coastal Act states, in part, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30240 of the Coastal Act states, in part, that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas and also that development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Resources referenced in the above stated Coastal Act policies are unique and are often only present within the coastal zone or along the coast line. Thus, they are valuable resources that must be identified and protected.

Protection of Coastal Resources should be a primary goal associated with any LUP. However, the proposed LUP Amendment does not provide policies to identify and protect Coastal Resources. The “Coastal Act Consistency” narrative portion of the LUP submittal contains language that acknowledges that there are bird species such as the black-crowned night heron, snowy egret as well as raptors present and that noise avoidance during construction should be practiced. No determination is made, however, as to whether the habitat of these bird species or the coastal bluff face constitute environmentally sensitive habitat areas (ESHA). Further, no policies are proposed for the protection of the trees used by these wading birds as nesting habitat. As submitted the Dana Point Harbor Revitalization Plan is therefore inconsistent with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act because it fails to provide policies that would identify and protect Coastal Resources. Therefore, the LUP Amendment must be denied as submitted.

**i. Locating New Development**

Section 30235 of the Coastal Act states:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.*

Section 30250 of the Coastal Act states, in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

Section 30251 of the Coastal Act states, in 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Section 30252 of the Coastal Act states, in part:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...*

Section 30253 of the Coastal Act states:

*New development shall do all of the following:*

*(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

*(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*

*(d) Minimize energy consumption and vehicle miles traveled.*

*(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Section 30254 of the Coastal Act states:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division... Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

The location of new development and issues it raises regarding scenic and visual resources, hazards, infrastructure, and paleontological cultural resources are important aspects of the Coastal Act. Section 30235 of the Coastal Act states, in part, that revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30250(a) of the Coastal Act states, in part, that new residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states, in part, that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Section 30252 of the Coastal Act states, in part, that the location and amount of new development should maintain and enhance

public access to the coast. Section 30253 of the Coastal Act state, in part, that new development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; 2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; 3) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development; 4) minimize energy consumption and vehicle miles traveled; and 5) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30253 of the Coastal Act state, in part, that new or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division.

### Hazards

The proposed LUP describes the ultimate development contemplated to be consistent with Coastal Act policies related to eliminating/reducing risks from hazards within the City's Coastal Zone. The City also states that the ultimate development would avoid development of coastal bluffs. However there are no policies that apply widely to all development proposed in the harbor that addresses these issues.

The City's bluff policies require strengthening or clarification to assure conformance with Sections 30251 and 30253 of the Coastal Act and the manner in which the Commission has applied those policies. Specific setback policies must be instituted as a means of limiting the encroachment of development seaward toward the bluff edge, ensuring geologic stability, and preventing the need for construction of protective devices and other engineered structures to protect development on bluffs. The establishment of minimal setbacks is necessary in order to account for uncertainty in geologic analyses, possible increases in long-term bluff retreat rates (as a result of sea level rise, for example), and to allow access for remedial action if and when erosion does threaten structures. Setbacks must be applied to principal development as well as accessory improvements. New development must also be required to meet a minimum factor of safety to assure stability.

The LUP lacks detail in regard to technical submittal requirements and project evaluation for development in areas subject to hazards. As submitted, the LUP does not contain policies that are sufficient to assure that

all development is consistent with Sections 30253 and 30251 of the Coastal Act, and therefore must be denied.

Shoreline erosion, beach replenishment, and the permitting and siting of shoreline protective devices also need to be addressed in the LUP. Policies must give proper consideration to alternative methods for protecting existing structures and public beaches. The construction of protective devices should only be considered after all other alternatives are exhausted. If alternatives exist, the construction of the protective device is not “required” pursuant to Section 30235. Where feasible, hazard avoidance, restoration of sand supply, beach nourishment, and removal and relocation of development must be considered. Greater emphasis must be placed on requiring new development to assure stability and limit erosion. The effects of sea level rise on new development must be considered. Existing narrative does not go far enough to carry forward the provisions of Sections 30253 and 30235 of the Coastal Act.

As required by Section 30253, new development must assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Section 30235 allows protective devices only when necessary to protect existing structures, coastal dependent uses, or public beaches. This has been interpreted to apply only to principal structures and not accessory improvements, as accessory improvements may not be structures, and even where they are, again, they are generally capable of being relocated, thus removing the necessity for a protective device (NPB-MAJ-1-04-[Newport Beach]). As currently written, the LUP does not distinguish between principal and accessory structures. The LUP must make clear that only existing principal structures may be afforded protection if subject to hazard. The LUP must also integrate the Coastal Act requirement for new development to assure stability to avoid the need for protective devices. The incorporation of policies aimed at minimizing the construction of protective devices is necessary to avoid adverse impacts to shoreline processes.

The LUP does not contain policies to address tsunamis, seiches, rogue waves, storm surge, storms, and sea level rise either. All of which are hazards that the Harbor is subject to and need to be addressed.

#### Paleontological and Archaeological Resources

Section 30244.

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic*

*Preservation Officer, reasonable mitigation measures shall be required.*

The LUP addresses paleontological and archaeological resources. It requires that new development include monitoring of grading activities, suspension of development, and preservation of the site for a period of time to allow a recovery plan to be completed. However, it does not contain provisions to avoid and minimize impacts to such resources and where impacts are unavoidable they must be mitigated. As submitted, the LUP does not contain sufficient detail to carry out Section 30244 of the Coastal Act.

### Visual Resources

The LUP fails to contain policies that would protect visual resources. There are a variety of public vantage points from Doheny State Beach, the bluffs surrounding the harbor and from other public areas, such as Street of Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point. Also, planned development (i.e. anticipated dry stack storage building, Commercial Core, and Marina Hotel) will have some impacts upon views from those areas, but those impacts will not be significant. Nonetheless, policies are necessary in order to protect visual resources found within the harbor. As submitted, the LUP does not contain policies that would carry out the Visual Resource policies of the Coastal Act.

The protection of coastal resources against the adverse location of development and associated issues regarding scenic and visual resources, hazards, infrastructure, and paleontological cultural resources should be primary goals associated with any LUP. However, the proposed LUP Amendment does not provide policies to prevent impacts due to location of development, scenic and visual resources, hazards, infrastructure, and paleontological cultural resources. Therefore, the submitted Dana Point Harbor Revitalization Plan is inconsistent with Sections 30235, 30250(a), 30251, 30252, 30253, and 30254 of the Coastal Act because it fails to provide policies that would protect against the adverse location of development and associated issues regarding scenic and visual resources, hazards, infrastructure, and paleontological cultural resources. Therefore, the LUP Amendment must be denied as submitted.

## **2. APPROVAL of the LUP Amendment if Modified as Suggested**

The findings for denial of the Land Use Plan Amendment as submitted are herein fully incorporated. The Suggested modifications consist of entirely re-drafted Land Use Plan (Exhibit #17).

**a. Tidelands and Submerged Lands**

Uses allowed on tidelands and submerged lands, which are also consistent with the Coastal Act, must be protected and policies to protect them should be found in an LCP. However, the LCPA fails to provide any policies that will protect and allow only uses that are consistent with the tidelands trust and the Coastal Act. Therefore, policies need to be provided that protect designated uses consistent with the tidelands trust and the Coastal Act.

Policies have been added in the revised plan as modified by the recommended suggested modifications to provide and protect uses that are preferred in the Coastal Act and allow only development, such as fishing, public access, water oriented recreation and incidental commercial uses, that is consistent with the Tidelands Grant.

However, some uses that the State Lands Commission staff has determined are consistent with the Tidelands Grant<sup>3</sup> need to be strictly controlled to also be consistent with Coastal Act requirements. There are presently two yacht clubs (i.e. the Dana Point Yacht Club and Dana West Yacht Club) and one boating association (Aventura Sailing Association) that occupy facilities within the harbor<sup>4</sup>. All of these existing facilities are located on the island area (Planning Area 4). The proposed Revitalization Plan includes provisions that allow the expansion of two of these existing facilities. The Dana Point Yacht Club currently has 12,400 sq.ft. and would be allowed to expand to 18,000 sq.ft. (+5,600 sq.ft.) and the Dana West Yacht Club has 3,600 sq.ft. and would be allowed to expand to 8,600 sq.ft. (+5,000 sq.ft.). No allowance is made for expansion of the Aventura Sailing Association building. However, the proposed Revitalization Plan also includes 'yacht clubs' as an allowable use in other commercial districts in the harbor, although there are no proposals known to the Commission to include additional yacht clubs in forthcoming development proposals. Nevertheless, the potential expansion of existing and construction of new private (membership) boating/yacht clubs or associations raises concerns about conflicts with the Coastal Act. The subject yacht clubs require membership (including sign-up fees and monthly dues) and sponsorship to join (i.e. other existing members must agree to sign your application prior to its consideration by the club). Thus, unlike other private commercial ventures in the harbor like hotels, restaurants, and retail shops, where any member of the public can utilize them, the use of the yacht club facilities is limited to

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<sup>3</sup> See email dated June 10, 2009 from Jennifer Lucchesi of the State Lands Commission to Mr. Bruce Heyman that is part of the record for this amendment.

<sup>4</sup> The status of coastal permitting for these clubs and association is undetermined at this time. The Dana Point Yacht Club, located at 24701 Dana Drive, occupies a building originally constructed as a restaurant with conference space (known as the Crown Point Restaurant) under coastal permit P-78-3714. No coastal permit to change the use of that building from a restaurant to a yacht club has been identified at this time. The background on the other two facilities is unknown at this time.

members (except during certain fundraising and educational events). The fees/dues and membership requirements of a yacht club substantially limit the population of people who can use those facilities. In addition, there is potential for these uses to limit general public access to the harbor and water (e.g. with physical obstructions, as well as use of boat slips solely for members). Yacht clubs also occupy land area and parking resources that could otherwise be used for other preferred uses under the Coastal Act (e.g. boat storage, visitor-serving commercial, lower-cost recreation, etc.). The proposed Revitalization Plan allows the existing yacht clubs to expand and occupy additional public tidelands area and will have higher parking demands on already limited parking. These concerns can be addressed by prohibiting establishment of physical impediments to access to the bulkhead, requiring that these facilities be available at select times for public use, limiting the amount of area in the harbor that yacht clubs can occupy, and prohibiting exclusive membership practices. In order to adequately deal with the issues under the Coastal Act raised by this use, a policy has been provided that states that any expansion of existing legally established boating/yacht clubs, associations and/or such clubs that renew or renegotiate their lease on public tidelands shall be required to: 1) allow unrestricted public access to and along the bulkhead/waterfront (this is to the extent the facility has control over such access); 2) make significant portions of the facilities available at all reasonable times to public (member and non-member) groups for banquets, receptions, meetings, luncheons, conferences, seminars and other similar events, and shall market the facilities as such (of course, this applies only in cases where the club has such facilities); 3) provide activities at the facilities accessible to the general public throughout the year such as, but not limited to, sailing and navigation classes; sailing and boat racing events, and boating safety classes (within the means of the club to offer such activities); 4) offer sailing, navigation, and boating safety classes and boat use and equipment for free (where the facility has access to such equipment) and low cost to economically disadvantaged families; 5) prohibit membership requirements that discriminate against anyone on the basis of race, color, religion, sex, national origin, sexual orientation or disability. This policy would ensure that the existing boating/yacht clubs and association are accessible to the greater general public and that the public has access to and along the water with expansion of those facilities. By instituting controls, the Commission isn't declaring that yacht clubs and associations are wholly inconsistent as a use within harbors. Rather, that such uses must be limited and managed in a manner that ensures that their impacts are minimized and mitigated.

Additionally, an added policy would prohibit new boating/yacht clubs or associations that require membership and/or fees for enrollment/initiation and/or recurrent fees since those uses hinder general public access to the water and would not represent a lower cost recreational use consistent with Section 30213 of the Coastal Act. In addition, such limitations protect

oceanfront land for recreational use consistent with Section 30221 of the Coastal Act, reserve upland areas for recreational use consistent with Section 30223 of the Coastal Act, and limits non-water-dependent land uses that congest access corridors and preclude boating support facilities consistent with Section 30224 of the Coastal Act.

Tidelands and submerged lands are subject to a public trust that, among other things, limits their use to navigation, fishing, public access, water-oriented recreation, open space and environmental protection and incidental commercial use. The Coastal Act values these types of uses since they provide opportunities for the public to enjoy the coast. Therefore, only if modified to include the above discussed policies can the LUP Amendment be found to be in conformance with Sections 30213, 30220, 30221, 30223, and 30224 of the Coastal Act.

**b. Coastal-Dependent/Related Development**

The Coastal Act protects coastal-dependent/related development and further states that this type of development has priority over other development near the shoreline. The Coastal Act also states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided and that recreational boating uses shall be encouraged and non-water dependent uses shall be limited. The location of Dana Point Harbor enhances the opportunity for access to the coast by the general public. However, as submitted, no specific policies have been included that will protect this type of development.

Policies have been included in the revised plan as recommended by the suggested modifications that the goal of the harbor redevelopment is no net loss of slips in the Harbor, as a significant loss of slips would adversely impact public access and hinder an important use for the public. Currently there are 2,409 slips in the Harbor with an average slip length of 30-feet. When the LUP Amendment was before the Commission in June a final marina reconfiguration plan had not been decided but the County/City was requesting a significant reduction (over 1100 slips) in the number of slips for smaller boats (less than 30-feet) for the following reasons: there is always a large number of vacant slips that are less than 30-feet; there is an increase in demand for larger slips (slips greater than 30-feet); there is a large number of boats that overhang their current slips; and that the existing slips are not built to current engineering or ADA design requirements. The redesigned Harbor being proposed at the June hearing would have had an average slip length of 34 feet.

Following the postponement of the June Commission hearing the County/City held additional public meetings and decided on a final Harbor alternative, known as Alternative 3.50 (Exhibit 20). While Alternative 3.50

significantly reduces the loss of small slips (less than 30' in length) from the previous proposal, the new alternative still results in a significant net loss of slips (209). The chosen alternative would also result in the loss of 323 small slips. Currently, 1,403 slips or 58% of slips in the harbor are less than 30' in length. Under the proposed LUP amendment 1,083 slips or 48% of the slips will be less than 30' in length. Further, 391 or 16% of existing slips are 30-34' in length. The chosen alternative would result in a five percent increase in this category to 457 slips or 21%. Under the County/City proposal, the greatest decrease in slip size is an 8% decrease in the 25-29' slip size, which is currently 48% of the total slips and would be 40% of the total if the proposed amendment is approved. The greatest increase is a 5% increase in the 30-34' slip size, which is currently 16% of the total slips and would be 21% of the total if the proposed amendment is approved (Exhibit 20).

The County also provided information concerning the existing number of slips for each slip length (Exhibit 22). The existing 2,409 slips range in size from 20 to 60 feet. The greatest number of slips are 25 feet in length. 33% or 801 slips are 25 ft. in length. 16% of the slips or 388 are 30ft. in length; 11% or 266 slips are 35'; 4% or 107 slips are 45'; 2% or 44 slips are 50' and only 0.1% or 15 slips are currently 60' in length. The average slip length is 29.85 ft. Under the proposed LUP amendment the average slip length would increase to 31.34 ft.

Alternative 3.50 would result in a net loss of 209 slips in the harbor (including a loss of 323 slips under 30 feet). The County was able to achieve this design and include some increase in the quantity of larger slips in that design by expanding slips into the main channel (a.k.a. channel narrowing), and by providing some doublewide slips, and power and sailboat width slips. The County has asked for an allowance in the LUP for the net loss of up to 225 slips to give them some design flexibility.

As stated, while the current proposal is an improvement over the proposal that was before the Commission in June, 209 slips is still a sizable loss as is a loss of 323 slips under 30 feet, particularly given Coastal Act Section 30224 which encourages protection of existing berthing area in harbors and expansion thereof. While many alternatives have been considered by the County, none of those alternatives have looked at expansion into other areas of the harbor along with the already-considered expansion of slips into the main channel. Additional alternatives need to be considered that draw upon all of the techniques previously used to reduce the quantity of slips lost and draw upon use of additional berthing area in the harbor. Consistent with Section 30224 of the Coastal Act, Suggested modification 4.2.2-6 (page 1-4.5) requires that the goal of the Harbor improvement plan be no net loss of slips.

The County indicated that one of its 26 design alternatives considered was

the reconstruction of the marina with the same ratio of slip sizes within the existing marina footprint (i.e. no channel narrowing or expansion into unused areas of the harbor). According to the County, that design resulted in the loss of 155 slips overall which was necessary to accommodate new design standards including ADA and current engineering design standards. Under the suggested modification, if slips are removed in order to meet ADA or current engineering requirements or to meet the demand for larger slips, slips would need to be replaced within new berthing areas within the harbor, perhaps within the “safe harbor” area, if feasible. If this proves to be infeasible, the net loss of slips must still be minimized but shall not exceed 155 slips.

The Commission understands the reasons for the loss of slips; but is concerned with the actual number of slips being removed without a commitment to the goal of no net loss of slips, if feasible. Policy 4.2.2-6 is written in a manner to encourage the County to consider other options, including a no net loss alternative. However, the policy also recognizes that even after considering other options it may still not be feasible to avoid a loss of slips in the harbor. The outcome is uncertain at this point pending the result of an even more robust consideration of alternatives (than has been undertaken so far).

If it is not feasible to retain the existing number of slips in the Harbor, providing dry boat storage opportunities within the Harbor must be considered before a reduction in the number of existing slips can be allowed. Thus, a policy (Policy 4.2.2-10) has been added that allows the removal of any existing slips only pursuant to an approved CDP for marina redevelopment that addresses impacts associated with the loss of slips. At that time the Commission will consider whether the construction and full operation of the planned 400 space dry stack boat storage facility has occurred and its impact on small boating opportunities. Policies have also been added to deal with the loss of small slips. Policy 4.2.2-6 also requires **that priority shall be given to the provision of slips that accommodate boats less than 25 feet in length and that** the average slip length not to exceed 32 feet from its current 30 feet.

These policies are found on Page I-4.5 of the revised LUP (Exhibit 17, page 49 of the staff report) and state:

Policy 4.2.2-6

Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips harborwide. However, if conformance with current engineering and American with Disabilities Act (ADA) design requirements, and/or the provision of larger slips to meet demands, requires a reduction in the quantity of slips in existing

berthing areas, those slips should be replaced, if feasible, in new berthing areas elsewhere in the harbor (e.g. within a portion of the 'safe harbor' area near the east breakwater). **Priority shall be given to the provision of slips that accommodate boats less than 25 feet in length.** The average slip length shall not exceed 32 feet. If new berthing areas are not available or are limited in size, the net loss of slips harborwide shall be minimized and shall not exceed 155 slips.

Policy 4.2.2-10

- Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:
- Redesign and expand the existing 5.7 acre boat launch facility to maximize the number of vehicle with trailer parking spaces meeting minimum Department of Boating and Waterway guidelines (10' X 40'). Some larger and smaller vehicle with trailer parking spaces shall also be provided in adequate amount to meet demand as determined through the coastal development permit process;
- Maintain space for at least 493 boats to be stored on dry land in Planning Area 1; 400 of these spaces may be provided in a dry stack storage facility. Maintain a minimum of 93 surface boat storage spaces, that can accommodate vessels that cannot be stored in a dry stack storage building, within the Harbor at all times, additional spaces shall be provided where feasible;
- Removal of any existing slips prior to construction and full operation of the boat storage facility shall only occur pursuant to an approved CDP for marina redevelopment that addresses impacts associated with the loss of slips; and
- Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

The City/County have developed guidelines for existing and potential slip renters, one purpose of which is to provide assurance to existing slip renters, that they would be able to keep their boats in the water during and after the renovation of the marina slips. A second purpose is to inform boaters renting a slip after June 15, 2007, that their assignment was temporary, due to the upcoming renovation of the slips. Boaters entering a slip after June 15, 2007 acknowledged and signed a "Temporary Slip Permit Agreement". These guidelines are tools for the County to address relocation options for slip tenants during and after construction which is beyond the intent of Policy 4.2.2-10.

According to the County, there are presently approximately 516 spaces for surface dry boat storage in Planning Area 1 (not including some additional area that is occupied by stored boats in the boat launch parking area and in the existing shipyard leasehold). In addition there are 334 spaces in a 5.7 acre area to park vehicles with boat trailers which are used once the boater has launched their boat at the adjacent boat launch ramp. A significant loss of dry boat storage spaces, coupled with a significant loss of in-water small boat slips, as well as any significant loss of vehicle with trailer parking spaces which support use of the boat launch ramp, would discourage recreational boating opportunities serving the general public which is a high priority use under the Coastal Act. Therefore, Policy 4.2.2-10 as recommended by the suggested modifications, is intended to protect area to store at least 493 boats in dry storage since a significant loss of this capacity would be inconsistent with the Coastal Act requirement to encourage recreational boating and would also adversely impact public access. If only 493 boat storage spaces were provided this would result in a loss of about 23 dry boat as storage spaces, but that number does not constitute a significant loss. Furthermore, the policy requires the protection and expansion of the 5.7 acre parking area for vehicles with trailers which support use of the boat launch ramp which is also a high priority use under the Coastal Act. **Additionally, Policy 4.4.1-3 requires that the existing 334 boat trailer parking spaces be retained for use of the boat launch ramp facility.**

As previously proposed there would have been a loss of 80% of the existing small in-water slips and the dry boat stack storage facility with a capacity of up to 400 boats was required. Under the current proposal the smaller slips would be reduced by 23% or approximately 300 slips. However, the Commission's policy requires a goal of no net loss of slips by creating additional berthing areas, if feasible. If additional berthing areas prove to be infeasible, a maximum net loss of 155 slips would be allowed.

The need for a dry stack storage facility should be evaluated at the time of the coastal development permit(s) for new development taking into consideration the potential loss of small slips and surface boat parking associated with harbor redevelopment. The LUP will contain policies that require the capacity to store at least 493 boats on dry land be preserved. Other policies which call for the retention of the maximum number of in-water slips should also reduce the demand for dry stack storage as an alternative. Any dry stack storage facility should accommodate the needs of boat owners, to the maximum extent feasible, such as the ability to access their boats without appointments.

The information provided by the County/City documents the existing Embarcadero surface boat storage area has historically contained a total of 65 boats in surface storage that cannot be accommodated in the future dry

stack storage facility. This figure includes the number of boats that are sailboats as well as those that are otherwise not suitable (too long and/or too tall) for the future dry stack facility and allows for 28 additional spaces (30% future growth) for a total of 93 needed surfaces spaces in addition to the 400 additional spaces to be provided as surface storage and/or in a dry stack facility.

Also, vehicle and trailer parking for the use of the public boat launch and surface boat storage within the remainder of the MSC Planning Area shall be maximized. Policy 4.2.2-10 also requires that the existing public boat launch parking lot be redesigned and expanded so that the vehicle with trailer parking spaces can be increased in size to meet the minimum Department of Boating and Waterways (DBAW) size (10' X 40'). However, additional larger vehicle with trailer parking spaces shall also be provided within the public boat launch facility to accommodate the larger heavy-duty tow vehicles and ocean-going vessels that are lacking in the current layout. Those parking space dimensions range from 12' X 40' up to 12' X 65' if the tow vehicle is an RV. Recent Commission staff conversations with DBAW boating facility staff indicates that the majority of the spaces should be provided at 10' X 40' but that the number of larger spaces should be determined by site specific demand<sup>5, 6</sup>. County staff surveyed the use of the public boat launch facility during the 2009 Labor Day weekend and found that 40% of the launchings were jet skis. It is unclear whether this use is typical or is specific to holiday weekends. Therefore, Policy 4.2.2-10 requires that the public boat launch facility be expanded but that both larger and smaller vehicle with trailer parking spaces be provided in addition to the standard DBAW spaces. The number of larger and smaller spaces to be provided will be determined based on non-peak demand during the coastal development permit process.

**While Policy 4.2.2-10 requires that the existing boat parking lot be redesigned and expanded so that both larger and smaller vehicle with trailer parking spaces be provided in addition to the standard DBAW sized spaces, another policy (Policy 4.4.1-3) is also in place to make sure that there is no net loss of the existing 334 boat trailer parking spaces.**

While an added policy would allow the average slip length to increase from 30 feet to 32 feet, the Commission finds that the LUP amendment, as modified, is consistent with Section 30213 of the Coastal Act by providing dry boat storage opportunities within the Harbor for the smaller boats which

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<sup>5</sup> Conversation with Bill Curry, Supervising civil engineer (retired), Department of Boating and Waterways, Boating Facilities Division, 9/22/09.

<sup>6</sup> Conversation with Bill Curry, Supervising civil engineer (retired), Department of Boating and Waterways, Boating Facilities Division, 9/22/09.

represents a lower cost recreational boating opportunity.

As stated previously, this LCP amendment serves as a planning document and does not approve any specific project components (i.e. construction of the redesigned marinas resulting in the change in number or size of slips, etc.). Subsequent Coastal Development Permits (CDP's) from the Commission will be necessary to approve any project components to carry out the final reconfiguration of the marina since it lies within the Commission's area of retained jurisdiction.

Policy 4.2.2-9 has been added in the revised plan as recommended in the suggested modifications that requires the retention of a shipyard, no less than 1.6 acres in size, within the MSC land use designation. Currently, a shipyard is operating on a 2.6 area lease parcel within the MSC area (Exhibit #9). However, the current shipyard operator has historically used less than 1.6 acres of the parcel to operate the shipyard. A portion of the 1.6 acres is sub-leased to a personal watercraft operation (jet ski and kayak rental/sales and repair), while the remaining 1.0 acre has historically been used for dry boat storage. The County/City has provided an analysis showing that 1.6 acres is adequate to operate a viable shipyard, taking into consideration the planned reconfiguration of the Harbor and increase in the number of larger boats. The County/City has modified the proposed Harbor redevelopment alternative since the June Commission hearing such that the average slip length (i.e. boat sizes) of the Harbor will be decreased from the previously proposed 34' to 32'. The percentage of slips 45-49' in length is proposed to increase by only 12 slips or 1% while slips in the sizes of 50-54', 55-59' and 60' and over will all decrease slightly in total slips but the percentages are proposed to remain the same (Exhibit 20).

The current shipyard operator disagrees with the findings of the analysis commissioned by the County/City and desires to retain the full 2.6 ac lease area for shipyard although acknowledging that the entire area has never been used for shipyard purposes (Exhibit #12). The lessee states that, with the planned Harbor reconfiguration, he will need the additional maneuvering space and 40 parking spaces and larger equipment to be able to service the larger vessels and to be able to continue to provide affordable "do-it-yourself" work areas for boat owners. The Commission notes that Policy # 4.2.2-9 of the revised plan requires a minimum of 1.6 acres be retained for shipyard use.

Additionally, policies that maintain the Marine Commercial (MC) and Marine Services Commercial (MSC) designation in an area on or near the water have been provided, which will continue to encourage a continuation of coastal-dependent and coastal-related uses in the harbor. Some of the uses allowed in these areas would consist of a dry stack storage facility, surface boat storage area, ancillary marine related administrative, professional and

business office, boat brokerages, jet-ski rentals and sales and kayak rentals, and harbor patrol office.

The LUP amendment proposal includes a free-standing 9,100 square foot marine retail store in Planning Area 1, which has the MSC land use designation. This area is currently used for dry boat storage and public boat launch parking. Day-use boater parking and dry surface boat storage are higher priority uses and a marine retail location would be better suited in a different location, such as within the Day-Use Commercial area. Thus, a policy has been provided that prohibits a free standing marine retail use within the Marine Service Commercial land use designation.

Also, a policy that ensures phasing of the anticipated development to ensure that land area, parking facilities and road capacity are dedicated for coastal-dependent and coastal-related land uses has been provided. **Further, the Commission added policies to the Land Use Plan that protects and enhances low-cost public boating facilities such as hand launched vessels. Policy 4.2.1-2 requires that storage for hand launch vessels also be provided as close to areas where these vessels can be launched, where feasible; in order to further enhance low cost boating opportunities.**

The Coastal Act states that coastal-dependent/related development has priority over other development near the shoreline and it also states that recreational boating uses shall be encouraged and non-water dependent uses shall be limited. The harbor provides an ideal location to provide such development and the proposed LCPA will allow this. Only if modified to include the above discussed policies can the LUP Amendment be found to be in conformance with Sections 30213, 30220, 30221, 30223, 30224, 30234, and 30255 of the Coastal Act.

**c. Visitor-Serving Commercial Development**

LCP's must include policies that protect Visitor-Serving Commercial Development. These policies are necessary in order to provide uses that will benefit the public along the coastline. The LCPA as submitted fails to provide adequate policies that will protect Visitor-Serving Commercial Development. Therefore, policies need to be provided that protect this type of use.

With respect to visitor-serving commercial development, the City's proposed LUP contains the following land use designations: Visitor-Serving Commercial (VSC) and Day-Use Commercial (DUC). These land use designations will allow uses that will provide commercial uses including eating and drinking establishments, recreation (including overnight accommodations) and entertainment establishments as a means of providing

public access to the waterfront. The suggested modifications make some changes to the list of allowable uses in these areas. For example, the City proposed to allow office uses and yacht clubs in these land use areas. Both of these uses are not priority uses under the Coastal Act and are not appropriate within areas designated for higher priority visitor serving commercial uses. Thus, the Suggested Modifications omit these uses from these land use planning areas.

Also, a policy that ensures phasing of the anticipated commercial development to minimize impacts on public recreational areas and the ability to provide adequate land area and support facilities for higher priority public access, public recreational and coastal dependent uses is provided. This policy is necessary in order to make sure that higher priority public access is provided at all times and that anticipated commercial development does not adversely impact general public access. In addition, a policy has been provided that specifies that sufficient parking for higher priority public access uses such as docks, boat launch and surface boat storage is provided prior to construction of any new anticipated commercial development. Accompanying this, a policy has been provided that requires the quantity of boat docks within the harbor be identified prior to approval of any new anticipated commercial development in order to make sure that adequate land area is reserved to provide parking for those docks. Otherwise, new anticipated commercial development may be located in an area that should instead have been reserved to provide parking for the boat docks, a higher priority use. Planning so that higher priority uses are not adversely impacted is necessary.

Under the Coastal Act, Visitor-Serving Commercial Development is strongly favored. This type of use is preferred because it maximizes the number of people who can enjoy the unique experience available only along the coast. The location of the site at Dana Point Harbor lends itself to a favorable location to provide amenities that will enhance the general public's access to the coast. Only if modified to include the policies contained in the Suggested Modifications can the LUP Amendment be found to be in conformance with Sections 30213, 30221, 30222, 30223 and 30250 of the Coastal Act.

**d. Low-Cost Overnight Accommodations**

As noted in the findings for denial of the proposed amendment, as submitted, the proposed amendment does not have any policies reflective of Sections 30210, 30213, 30221 and 30222 of the Coastal Act that would protect existing lower cost overnight accommodations and assure that renovated or new accommodations are also low cost; thus, the City, in its review of coastal development, is not required to make findings to assure low cost overnight visitor accommodations are encouraged, protected and provided. Strong, policies are needed to guide protection and provision of lower cost overnight

accommodations. Therefore, the LUP amendment cannot be found consistent with the Coastal Act.

Historically, the Commission has not finalized the definition of "low cost overnight accommodations". In past actions, low cost was loosely considered to be less than \$100 per night. Commission staff have been working on a dynamic tool/formula to determine better define what accommodations can be considered low cost, but that formula is not finalized. The City has expressed concern with including any specific formula in the Land Use Plan given that refinements are still likely. Thus, instead of relying on a formula, the City and OC Dana Point Harbor have agreed to stipulate that the existing hotel, which has room rates of about \$89.00/night, is low cost, and that any renovated, replaced or new additional units would also be low cost. Policies are necessary to address this issue. Therefore, the land use plan amendment, as proposed, cannot be found consistent with the Coastal Act.

Modifications are being suggested to the City's adopted LUP to incorporate provisions for the protection of low cost visitor-serving facilities and overnight accommodations in the Harbor. These modifications also serve to better protect and promote overnight accommodations with a range of affordability. The suggested modifications will result in an amended land use plan that is consistent with the applicable policies of the Coastal Act.

These suggested modifications include specific language pertaining to the protection of existing low cost overnight accommodations, as well as the requirement for any redeveloped or new/additional units to be low cost, as requested by the City. Section 30213 protects lower cost visitor serving and recreational facilities. As discussed above, as land becomes less available and more expensive, protection of coastally located facilities that provide recreation and accommodations to the general public become invaluable. It is important to protect those uses that best service the public in general, as opposed to members of the public that can afford certain luxuries.

The Suggested Modifications contain policy 5.2.1-2 that pertains to the demolition and possible redevelopment of existing lower cost overnight accommodations. The protection of the existing stock of lower cost overnight accommodations is important. As mentioned previously, the general trend of redevelopment is removing existing lower cost accommodations and replacing them with higher-end hotel/motel units. Thus, the policy states that if demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with units that are of equal or lower-cost than the existing lower-cost units to be demolished. Conversion of any existing units to high cost, replacement of any existing units with anything other than

lower cost, and construction of any new/additional units that are anything other than lower cost units shall require a local coastal program amendment to address Coastal Act issues associated with such proposals.

As requested by the City, this policy prohibits the City from approving anything other than a low cost facility. In this way, the need for mitigation fees is avoided. If the City contemplates approval of something other than a lower cost facility, it would need to pursue an LCP amendment.

In conclusion, the addition of the above stated policy will 1) set priorities for the types of development within lands suitable for visitor-serving uses; 2) protect those visitor-serving recreational and overnight uses that can be considered lower cost; 3) protect the current stock of lower cost overnight accommodations by requiring their replacement with any demolition of existing lower cost over-night accommodations and 4) promote the future development of lower cost overnight accommodations. The result of these provisions is that development in areas suitable for visitor-serving uses will be used as such and will be accessible to the highest proportion of the public as feasible, and therefore be consistent with the Coastal Act.

**e. Limited Use Overnight Visitor Accommodations (LUOVAs)**

Recently, the trend has been for developers constructing projects with overnight accommodations to seek individual investors to aid in the initial costs of construction and development. This often results in a development having a "private component" that limits the visitor-serving use of the facility. These developments incorporate condominium hotel units or fractional ownership units (i.e. Limited Use Overnight Visitor Accommodations or LUOVAs), both of which give some priority to the individual owners, and diminish the visitor-serving use of such a facility.

Hotels on sites designated for visitor serving uses are among the higher priority commercial uses encouraged and protected by the Coastal Act. Policies must be in place to protect those uses -that are located on key visitor-serving sites- from conversion to uses, such as LUOVAs, that have a lower visitor serving value.

With regard to LUOVAs, the Commission finds that it is necessary to insert certain clarifications and provisions that apply to LUOVAs broadly, as follows: 1) add a defined term for Limited Use Overnight Visitor Accommodations; and 2) add an LUP policy to clarify that no existing, traditional overnight transient visitor serving accommodations can be converted to Limited Use Overnight Visitor Accommodations and no new LUOVAs may be constructed on public tidelands. Policies that address these issues for non-tideland areas are not needed in this case because the subject Revitalization Plan applies only to tidelands.

The term “timeshares” is often used as a “catch-all” phrase that could include a variety of ownership types. However, the term “timeshare” can have a more specific meaning that defines a particular type of divided interest product. Thus, a distinct definition is necessary in the Land Use Plan. A modification is suggested to add a defined term for Limited Use Overnight Visitor Accommodations. The definition should be sufficiently broad to encompass all the types of limited use hotels that may be contemplated by the City. The suggested definition is an umbrella term intended to encompass such limited use accommodations as “timeshare”, “fractional ownership hotel”, and “condominium-hotel”.

The proliferation of timeshares in place of existing facilities providing traditional overnight accommodations would have a severe negative impact on the visitor serving function of these facilities. Therefore, a modification is suggested that would prohibit the conversion of any existing overnight accommodations in the Harbor, such as hotels and motels, to any form of Limited Use Overnight Visitor Accommodations. Conversion of an existing hotel- or motel-type use from traditional, transient overnight accommodations to a LUOVA must be avoided. As described previously, allowing LUOVAs, undefined and unrestricted, throughout the Commercial Visitor designation does not maximize visitor serving uses. The proliferation of LUOVAs in place of existing facilities providing traditional overnight accommodations would have a severe negative impact on the visitor serving function of these facilities. Therefore, a modification is suggested that would prohibit the conversion of any existing overnight accommodations, such as hotels and motels, to any form of Limited Use Overnight Visitor Accommodations.

In December 2006, the California State Lands Commission (SLC) held a public hearing to consider the consistency of a timeshare component of the Woodfin Suites Hotel in San Diego's Port District with the Public Trust Doctrine. The SLC performed an extensive analysis of the history of timeshare proposals on public trust lands, the impact that a timeshare development would have on the public's rights, and the public's ability to use the shoreline. The SLC determined that the development of timeshares would be inconsistent with the Public Trust Doctrine and the trust under which the San Diego Unified Port District holds title to the public trust lands that were involved. The SLC analysis concluded that timeshares do not enhance and facilitate the public's enjoyment of public trust lands as do traditional hotels, but instead significantly restrict the ability of the general public to use the shoreline. The substantial financial investment required to purchase a timeshare severely limits the number of people who would be able to use the timeshare units. In addition, there were concerns that try to improve the visitor-serving function of a timeshare through conditions would be difficult and that enforcing limitations or permit conditions on projects with potentially thousands of owners could be extremely difficult and burdensome

(San Diego Unified Port District Port Master Plan Amendment No. 39  
(Woodfin Suites Timeshare/Hotel)).

Since the public access and recreation policies of the Coastal Act such as Sections 30210 and 30213 are expressions of the public trust doctrine, it is important that the Commission interpret them in a manner that is most protective of the public trust. If LUOVAs were permitted in the Harbor, it would effectively rezone the area to a lower-priority, residential-like use, with little benefit to the public. There are no public benefits to allowing LUOVAs on a hotel site, but there are considerable disadvantages and risks. The opportunities for public access and recreation would be far less than with a traditional hotel property, and certainly less than what is required for a designated commercial recreation site on public trust lands. Placing these limitations on access to and use of publicly-owned prime visitor-serving shorefront is not consistent with the public access and recreation policies of the Coastal Act. Development of a lower cost traditional hotel is the preferred alternative. Therefore, the Commission imposes a suggested modification that prohibits conversion of existing or construction of new LUOVAs on public tidelands in the Harbor.

Therefore, for the reasons outlined above, the Commission finds that only if modified as suggested, can the proposed LUP amendment be found to be consistent with Sections 30210, 30213 and 30222 and all the public access and recreation policies of the Coastal Act.

**f. Transit/Smart Growth**

Section 30250 of the Coastal Act requires that new development be concentrated in existing developed areas where it can be accommodated without adverse effects on coastal resources. Section 30252 of the Coastal Act states that the location and concentration of development should maintain and enhance public access to the coast by facilitating the extension of transit service and minimizing the use of coastal access roads. Section 30253 indicates new development shall minimize energy consumption and vehicle miles traveled. Concentrating development in developed areas has cumulative benefits. It would lead to less pressure to extend new development into undeveloped areas, which would prevent sprawl, preserve open space and prevent adverse impacts to sensitive habitats. By concentrating development in developed areas where it can be accommodated, sensitive coastal resources would be protected and preserved. Additionally, the location and concentration of development would maintain and enhance public access to the coast.

As described in the findings for denial, Land Use Plans must contain policies to encourage provision and use of public transit. Provision of a public shuttle service is one method to allow visitors to move from one area through non-

automobile circulation thus reducing traffic congestion and enhancing public access to the coast. Ideally, a shuttle system would connect the Harbor District with other visitor-serving areas in the City, such as Doheny State Beach and the Towne Center. The City has indicated that a shuttle for use by the public is provided during peak use periods associated with temporary events such as the annual Blues Festival; however, there is not currently a demand for an ongoing shuttle system.

In the revised plan as modified by Commission staff, the LUP amendment would not require that new development participate in development of a public shuttle system. However, the following policies have been provided: OC Dana Point Harbor in cooperation with the County and adjacent cities will determine the feasibility of the Tri-City Trolley being operational prior to or concurrent with build-out and occupancy of the Commercial Core; funding mechanisms and the option to serve Dana Point Town Centre as an activity center will be evaluated; and to reduce traffic congestion and parking demand within OC Dana Point Harbor and enhance connectivity between areas of high public use within the Dana Point coastal zone (e.g. Harbor, Town Center, Doheny State Beach, hotels, etc.), the OC Dana Point Harbor shall implement a shuttle service to link the Harbor with other areas of high public use when anticipated ridership suggests demand for such service. The City and OC Dana Point Harbor shall continually evaluate traffic and parking demand within the harbor to determine whether implementation and/or expansion of existing shuttle service is required. Where shuttle service implementation and/or expansion is determined to be necessary to offset the impacts of new development, the City and/or OC Dana Point Harbor shall require new development to participate in the provision of such service. There is also a policy stating that a seasonal water taxi will be incorporated throughout the harbor if there is demand for such service.

Other transportation specific policies have also been provided, which will improve the vehicular circulation system to minimize pedestrian conflicts, thereby improving public access to the Commercial Core area and the ocean. For example, policies that state transit service and pedestrian/bicycle trails shall be maintained and enhanced wherever possible in order to reduce the demand for parking. In addition, policies regarding parking have also been provided that would enhance the vehicular circulation system within the anticipated Commercial development.

If the plan is modified as described in the Suggested Modifications which provide policies to encourage or require improved mass transit and other methods of transportation that do not rely on automobiles, the amended plan can be found consistent with the above described elements of Sections 30250, 30252 and 30253 of the Coastal Act.

**g. Public Access and Recreation**

Public Access and Recreation are essential policies that should be found in the LCP. These policies are necessary in order to maintain and promote general public access to the coast for the public. As submitted, the LCPA fails to provide adequate policies to protect and enhance Public Access and Recreation.

Therefore, policies have been provided in the revised plan as modified by Commission staff, which state that oceanfront land suitable for recreational use and development shall be protected. In addition, policies have been provided that preserve, maintain, and enhance existing public accessways to the harbor and existing open areas to the public, and also to create new public access opportunities where feasible. Policies that would also continue to provide and also enhance access to the harbor have been provided. For example, roadway circulation improvement policies have been added that would improve access to the harbor.

In order to continuously provide recreational opportunities within the harbor, a number of policies have been provided including: a policy that would encourage the provision of a range of recreational facilities and programs to meet the needs of Harbor visitors; a policy that states that development adjacent to parks and recreation areas shall be sited to prevent impacts to those areas; and a policy that would maintain, enhance, and where feasible, expand places to hand launch small non-motorized watercraft and provide necessary parking; as well as opportunities to rent and store such watercraft **as close to hand launch area as feasible**. Policies regarding temporary events (and associated impacts), access for persons with disabilities and education have also been provided. The policy language regulating temporary events is consistent with the "Guidelines for the exclusion of temporary events from Coastal Commission Permit Requirements" adopted by the Commission on May 12, 1993.

Adequate parking must be supplied in new development to assure that patrons of the new development do not rely upon other parking that is available for other higher priority coastal dependent uses (e.g. boating) or that is used for other public access purposes. The proposed Revitalization Plan calls for intensifying uses in the harbor, mostly with additional visitor-serving commercial development (retail and restaurant), although there are allowances for expansion of other facilities too (see Exhibit 5). The square footage identified in Exhibit 5 is the maximum possible, but less may be required or desirable to assure the continued operation of other existing uses.

Parking is a limited resource in the harbor, and there are diverse, intense and competing demands on the existing supply of 3,962 passenger spaces<sup>7</sup> (according to the City/County as shown in Exhibit 18). Parking within the harbor is generally divided into areas supporting the following general categories: dedicated boater parking for boat slips (most of which are key-card access controlled), time limited parking for commercial development (e.g. restaurants, retail shops, etc.), parking space for vehicles with trailers for the boat launch ramp, surface boat storage spaces, and parking for the hotel, yacht clubs, Marine Institute, Catalina Express and sportfishing, and spaces supporting access to recreational amenities like Baby Beach and picnic areas, walkways and green space out on the island (Planning Area 4). These existing parking spaces are distributed around the harbor in surface parking lots that support the adjacent uses (see Exhibit 18). The area of greatest competition for parking is in the north-east quadrant of the harbor (identified as 'parking area I' in Exhibit 18), where significant existing and proposed commercial development (e.g. restaurants, bars, retail) is located, the Catalina Express and sport fishing docks, the boat launch ramp, boat storage areas, and boat slips. This is the area closest to major roads with access into the harbor like Street of the Golden Lantern and Pacific Coast Highway which feed onto Dana Point Harbor Drive and is where the 'Commercial Core' is contemplated.

There are very limited opportunities to provide additional parking in the harbor without constructing multi-level parking structures. Use of such structures is constrained by the need to avoid adverse visual impacts in the harbor setting, minimizing displacement of other uses, and the inherent limitations on the types of vehicles that can use them (e.g. at-grade lots can be used for multiple purposes (e.g. cars, small and large vehicles with and without trailers for boats, as well as for boat storage), whereas structures can mostly only be used by passenger vehicles.

The plan contemplates a multi-level parking garage to serve the planned intensification in the Commercial Core (see Exhibit 18, beginning on page 6, 'parking area I'). That parking garage, if placed where preliminary plans show, would displace boat launch ramp parking and parking for sportfishing. The boat launch ramp parking would be made up by consuming some area currently used for boat storage. Of course, at this point, the only thing before the Commission is the LCP which establishes land uses, parking ratios, etc. and not the footprint of any forthcoming development. Elsewhere, existing parking spaces would be re-tasked toward other uses. This is made possible in this amendment through a change in the parking ratio requirements for various uses; but mostly by reducing the parking allocation required for boat

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<sup>7</sup> There are about 62 additional on-street spaces along Dana Point Harbor Drive and 65 on-street spaces on Street of the Golden Lantern

slips from the current 0.75 to 1.6 spaces per boat slip, to 0.6 spaces per boat slip (as discussed further below). So, as an example, on the island (Planning Area 4), existing parking spaces that are currently allocated for boater parking under the 0.75 to 1.6 spaces per boat ratios, would be freed up by changing the required allocation to 0.6 spaces per boat, at which point the remaining spaces can be re-allocated for use by the planned expanded restaurant and yacht clubs in that area. As discussed elsewhere, the Commission is accepting this change to the parking requirement for boat slips. However, not all such re-allocation of parking spaces would be appropriate. For instance, parking that currently support recreational uses in the linear park in Planning Area 4 (e.g. picnicking, walking, etc.) would not be appropriate. Re-allocating these spaces needed to support lower cost recreation in favor of an expanded yacht club or restaurant would not be consistent with Coastal Act requirements regarding protection of lower cost recreation. Thus, a policy is incorporated into the plan that prohibits this sort of re-allocation.

Ideally, any forthcoming project(s) would address existing parking deficiencies to the maximum extent possible, provide adequate parking to support any intensification, minimize and where feasible avoid displacement of other high priority uses (e.g. boat launch ramp parking, surface boat storage, parking for existing and expanded slips), incorporate parking management techniques to make better use of existing parking resources without diminishing the primary purpose of that parking, and draw upon alternative transit to reduce reliance upon cars. Thus, the suggested modifications (found in Chapter 6 of the suggested modifications) include policies that encourage that outcome. Some key provisions include policy 6.2.5-5 that requires provision of adequate off-street parking to support proposed development. In addition, a policy has been provided that prioritizes construction of proposed parking facilities in new development to augment parking for Harbor visitors and boaters. Also, there is a policy requiring that a parking management plan be prepared to make better use of existing and any proposed public parking for the harbor. Finally, the suggested modifications require that adequate parking or alternative public transportation be provided. The specific parking ratios will be reviewed by the Commission in its consideration of the Implementation Plan.

One of the more significant changes to parking requirements in the existing LCP is the proposed change to the parking required for boaters. Currently, for boat berthing areas, the LCP requires 0.75 spaces for slips 30 feet and under, 1.2 spaces for slips over 30 feet but under 45 feet, and 1.6 spaces for slips over 45 feet in length<sup>8</sup>. The City/County proposed to change this

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<sup>8</sup> See Section I.D.2.b (Circulation and Parking) in the 'Design Criteria and Minimum Specifications for Construction by Lessees at Dana Point Harbor' adopted by reference in the Dana Point Specific Plan Local Coastal Program Implementing Actions Program pursuant to Policy F.1.c.

requirement to 0.60 spaces per boat slip. The City/County have justified this change on a number of factors. First, the City/County state that a study conducted by County staff in 1996 found that the existing ratio is much higher than ratios used in other California coastal marinas. That study recommended use of a ratio of 0.60 spaces per slip. The City/County are recommending the ratio of 0.60 spaces per slip because that ratio is provided as a guideline by the California Department of Boating and Waterways, and based on their own observations of parking lot usage in Dana Point Harbor. A parking usage survey of the boater parking lots conducted in 2006 by KOA Traffic Planning and Engineering found that there would be adequate boater parking, even during peak summer weekends (except for major holiday weekends), if the ratio were lowered to 0.60 spaces per slip (see summary of study found on Exhibit 37). In fact, even though the LCP hasn't yet been changed, the County has been operating the boater parking areas with the 0.60 ratio since 1996 (when the Orange County Board of Supervisors adopted the standard) and have found it to be adequate. This ratio is slightly lower than the ratios used by other cities in the vicinity. Commission staff has confirmed that a ratio of 0.75 spaces per slip is used by the City of Long Beach, City of Newport Beach, and in Marina del Rey. Nevertheless, the City/County have documented that boater parking demands would be adequately met in Dana Point Harbor using the proposed 0.60 spaces per boat slip. While this ratio may be adequate for Dana Point Harbor, other harbors may be different.

The boating community has raised some concerns about lowering the parking required for boat slips and about other patrons of the harbor using/sharing parking<sup>9</sup>. Most of the concerns expressed stem from boaters experience with parking in the boater parking lots nearest to the Commercial Core. There are two parking lots in that area, a 121 space lot nearest to the commercial area (see Exhibit 37, 'east basin cove lot 6'), and a larger 490 space lot in front of the hotel (see Exhibit 37, 'east basin cove lot 2'). The City/County state that the 121 space lot is highly impacted because it is closest to the Commercial Core and any boater in the marina, regardless of the location of their boat, can use their key-card to access that lot and that many boaters use that lot when they want to visit the Commercial Core. The City/County state that new parking management measures would ensure that only boaters with boats near that lot can use it. In addition, the City/County have stated their intention to move transient boater docks (that don't usually generate a parking demand) into this area as part of the planned dock reconstruction so as to reduce the boater parking demand in this immediate

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<sup>9</sup> A variety of charges have been made about unpermitted re-allocation of parking spaces from one group to another group (e.g. Catalina Express use of 'boater' parking lots, commercial employee use of boat launch ramp parking area, long term boat storage in boat launch ramp parking, etc.). These charges are under investigation by Commission enforcement staff as to whether such reallocation would need a coastal development permit.

area. Boaters state that the 490-space lot is also impacted, in part due to the shared use of these lots by Catalina Express, and in part by other users (including other boaters using the lot to access the commercial area). However, the 2006 by KOA Traffic Planning and Engineering found that there is adequate space in the 490-space lot to accommodate Catalina Express. Better parking management techniques will alleviate concerns here as well. For example, the County shows on Exhibit 18, page 7, their plan to shift some parking for Catalina Express over to other remote lots during summer periods when there is greater boater use of the boater parking lot. Boaters assert these issues will be compounded in both lots by the increased intensity of use in the Commercial Core. Therefore, the Commission has included policies in the Land Use Plan requiring the City/County to put together a comprehensive parking management program that will address these issues. The parking management program will need to consider a variety of needs, depending on the location of the parking and the surrounding uses, giving special attention to the needs of boaters (where shared use would likely not be appropriate because of the unpredictability of some use) and users of the boat launch ramp because there are limited options for parking vehicles with trailers other than within the boat launch ramp parking. The needs of the general public visiting the harbor should also be considered where existing parking lots are underutilized during certain periods of time. In addition, the City/County state they won't rely on shared parking to park the expanded Commercial Core (see Exhibit 18, pages 6-9). Instead, a new parking garage will be constructed to serve that new development. Policies in the suggested modifications encourage that parking for new development be provided.

Boaters have also expressed concerns about the proximity of dedicated boater parking to the slips that parking serves. The main issue is with regard to the planned re-location of the 121-space lot away from the bulkhead as part of the Commercial Core project. These issues are more appropriately addressed at the coastal permit stage. However, policies addressing the proximity of parking to the use are appropriate. The existing LCP requires that parking be placed within 300 feet of the use it serves (this is a generalized requirement in the LCP that applies to parking for all uses). Generally speaking, this will be feasible in most circumstances. However, in some limited places, such as in the Commercial Core development area, such placement may not be feasible. In such cases, an allowance for up to 600 feet should apply. This would be distance between the parking space and the point of connection from land to the dock. To address concerns about the distance expressed by some boaters, the City/County have stated their intent to provide drop-off areas, hand carts, and 'on-call' shuttle service for boaters that must park in lots that are farthest from the bulkhead. A policy has been included in the LCP to address the 'distance' issue in Section 6 of the suggested modifications.

The suggested modifications also incorporate policies to ensure the continued provision and expansion of shoreline access in the harbor. Some key policies include 6.2.4-10 that calls for provision of continuous public access along the waterfront and bulkhead in the harbor, and policy 6.1.1-4 that calls for a comprehensive sign plan to assure the public is well-informed about available access opportunities. There are numerous other suggested policies that address location of access, protection of views from accessways, distribution of access opportunities, and interconnection with off-site access, among others.

The Coastal Act strongly prefers Public Access and Recreation since it allows the general public a chance to enjoy and experience the coastline. The location of the site at Dana Point Harbor enhances that experience as it is a location where different types of opportunities to experience the coast are found. However, adequate policies have not been included that will protect and enhance Public Access and Recreation. Only if modified to include the policies identified in the Suggested Modifications can the LUP Amendment be found to be in conformance with Sections 30210, 30211, 30212(a), 30212.5, 30214, and 30252 of the Coastal Act.

**e. Coastal Resource Protection**

Coastal Resources must be protected and policies to protect them should be found in an LCP. These policies are necessary in order to safeguard the resources that are unique to California's coastline. The LCPA fails to provide any policies that will protect Coastal Resources. Therefore, policies need to be provided that protect these resources.

Within the harbor are a wide range of biological resources that must be protected. A policy has been provided that states that environmentally sensitive habitat areas (ESHA's), and other important plant communities, wildlife habitats, marine refuge areas and significant tree stands shall be appropriately preserved and protected depending upon their designation. In addition, a policy has been provided that states ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. **Finally, Policy 8.4.1-9 has been added that would protect biological resources from the impacts of lighting.**

Policies that will also protect marine resources need to be provided as well. These policies will require that uses of coastal waters, streams, wetlands, estuaries and lakes be carried out in a manner that will restore and sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific and educational purposes. Additionally, these policies will require protection against the spillage of crude oil, gas,

petroleum products or hazardous substances in relation to any development or transportation of such materials. Furthermore, these policies will require implementation of strict environmental protection practices during any necessary diking, filling or dredging of open coastal waters, wetlands, estuaries and lakes to reduce any significant disruption of habitats and water circulation. These policies also will require that standards for maintaining the quality of water through the implementation of erosion control and flood control facilities are achieved. The following are examples of some of the types of policies that will be provided to protect marine resources: a policy that states that marine resources shall be maintained, enhanced and where feasible, restored and that special protection shall be given to areas and species of special biological or economic significance; a policy that states that the biological productivity and quality of coastal waters, streams, wetlands, estuaries and lakes and the restoration of optimum populations of marine organisms shall be ensured; a policy stating that the diking, filling or dredging of open coastal waters, wetlands, estuaries and lakes shall only be permitted in accordance with Section 30233 of the Coastal Act; a policy stating that new development shall include construction phase erosion control and polluted runoff control plans, a policy that reduces underwater noise impacts from construction; and a policy that would monitor dredging projects within the region to identify opportunities to reduce disposal costs and utilize dredge spoils for beach nourishment; and a policy protecting eelgrass.

An activity within the harbor that can adversely impact habitat, more specifically avian species, is the practice of tree trimming. **While the evaluations of the trees located throughout Dana Point Harbor concluded that the trees do not rise to the level of ESHA, they do provide habitat that should be protected.** Thus, a policy has been provided regarding tree trimming, Policy 7.1.2-2. This policy will ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, and nesting habitat of bird species listed pursuant to the federal of California Endangered Species Acts, California bird species of special concern and wading birds (herons and egrets), **as well as owls and raptors.**

The LCP lacks policies dealing with the trimming of trees. The Commission has found that herons and egrets often nest and roost in harbor areas (Long Beach and Channel Islands). Such is the case in Dana Point Harbor. The County/City has acknowledged that there is documented nesting by black-crowned night herons and likely nesting by snowy egrets at the southern end of Puerto Place within an existing park area in Planning Area 1, designated Marine Service Commercial (MSC) (Exhibit #14). The wading birds are nesting in non-native eucalyptus trees. Additional non-native coral trees and fan palms are adjacent to the eucalyptus trees but 47 nest structures were all

found within the eucalyptus trees. The trees are located within an area adjacent to an existing road, restroom, and a parking lot.

While herons and egrets (wading birds), **as well as owls and raptors**, are no longer threatened, the wetland ecosystems upon which they depend are in trouble. In southern California, many wetlands have been replaced by marinas and herons and egrets, **as well as owls and raptors**, have adapted by relocating their roosting and nesting sites to stands of tall non-native trees. The Commission must determine whether the trees used by the herons and egrets, **as well as owls and raptors**, in Dana Point Harbor rise to the level of ESHA. In order to rise to the level of environmentally sensitive habitat (ESHA), Staff Ecologist, Dr. Engel, has recommended tree stands (“heronries”) that support roosting and nesting wading birds must meet two criteria;

1). They must be relatively rare when analyzed on a regional basis – Areas with suitable tree stands that meet wading bird roosting and nesting requirements (height and foliage and proximity to foraging grounds) would be considered “relatively rare”.

2). They must be in close proximity (within foraging distance) to a major wetland complex (e.g. Ballona Wetlands and non-native tree stands in Marina Del Rey) - A major wetland complex is one that is tens to hundreds of acres in size and consists of some combination of estuary/lagoon, channels, mudflats, salt marsh, brackish marsh, freshwater marsh, and uplands.

Neither the tree stand nor the wetland criteria is met in Dana Point Harbor; tree stands appropriate for supporting roosting and nesting wading birds are not relatively rare based on Dr. Engel’s criteria (similar tree stands exist within the adjacent Doheny State Beach) and a major wetland complex is not within average foraging distance of the wading birds that occupy the tree stands in Dana Point Harbor. The biologist retained by the County/City has determined that the trees are not ESHA but recommends that the trees be preserved as nesting habitat.

Although the Commission finds that the trees used by the herons and egrets, **as well as owls and raptors**, do not rise to the level of ESHA, they must be protected as nesting and roosting habitat (**Policy 7.1.2-2**), similar to the protection afforded the trees used by herons and egrets in Channel Islands and Long Beach harbors in which the Commission also found did not rise to the level of ESHA (Channel Islands PWP Amendment 1-07 & CDP No. 5-08-187-[Long Beach]). Therefore, Policy 7.1.2-2 has been added to the LUP that prohibits the removal of any trees that have been used by wading birds (herons or egrets) as well as owls or raptors for nesting or roosting within the past five years unless necessary for public health or safety reasons. **Policy 7.1.2-3 has also been added, which states that a**Any trees removed would

also have to be mitigated at a 1:1 ratio and tree trimming would have to be done outside of the nesting season unless a public health or safety reason would require trimming during the nesting season. The policy further requires that the details of the tree trimming program be developed in the Implementation Program portion of the LCP. Additionally, Policy 7.1.2-~~43~~ has been added to ensure that noise from construction does not adversely impact the nesting activities of the above identified bird species. The Commission has required similar construction noise control adjacent to heron and egret nesting areas in Marina del Rey in the Oxford Basin project 5-08-242 (Los Angeles County) and elsewhere in Ventura County.

LCP's must include policies that protect water quality. These policies must prevent adverse impacts to water quality stemming from construction anticipated to take place in the harbor and also impacts that would occur after such construction takes place. In order to protect water quality, several policies have been provided, including: a policy stating that development shall not result in the degradation of the water quality of coastal surface waters including the ocean, coastal streams, or wetlands and of groundwater basins; a policy stating that development shall be designed to minimize to the maximum extent feasible, the introduction of pollutants that may result in significant impacts to surface waters, groundwater, or coastal waters; a policy stating that new development shall minimize, where feasible, the development footprint and directly connected impervious surfaces, as well as the creation of and increases in impervious surfaces; a policy stating that commercial development shall incorporate BMP's designed to minimize or avoid the runoff of pollutants from structures, landscaping, parking and loading areas; and a policy regarding boat maintenance and operation practices. Due to its impact on water quality, a policy regarding engines in all motorized marine vehicles (e.g. jet skis, motor boats, etc.) has been provided, which encourage the use of less polluting, cleaner running engines in all motorized marine vehicles (Policy 7.3.2-2). Furthermore, a policy has been provided to deal with the type of materials used for piles. The policy states that the preferred material for pilings used for construction of piers, docks, or slips is concrete or steel coated with a non-toxic material. However, pilings treated with Ammoniacal Copper Arsenate (ACA), Ammoniacal Zinc Arsenate (ACZA) or Chromated Copper Arsenate (CCA) wrapped or coated prior to installation with a water tight plastic sleeve or similar sealant can also be used, but are not preferred over concrete piles or steel piles coated with a non-toxic material. Also, timber piles preserved with creosote (or similar petroleum-derived products) are not allowed. Additionally, due to the impacted water quality that occurs at Baby Beach, Policy 7.2.1-11 has been provided which, while it allows for the non-motorized craft launching area and picnic and park area within Baby Beach to remain, the policy allows for modification of the configuration in order to accommodate mitigation for water quality-related improvements.

In addition to the previous discussed policies regarding water quality, landscaping also plays an important part in the protection of water quality. Any proposed vegetated landscaped areas located in the harbor should only consist of non-invasive plants that are drought tolerant. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation, which is primarily drought tolerant. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should primarily be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Hence, a policy stating that only non-invasive, drought tolerant plants be used for landscaping has been provided. **In addition, Policy 7.3.1-16 prohibiting the use of rodenticides containing anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum or Diphacinone) is included.**

Wetlands contain important habitat value and policies must be provided to protect them from adverse impacts. For example, policies that define a wetland and also require a survey and analysis with the delineation of all wetland areas when an initial site survey indicates the presence or potential for wetland species or indicators have been provided. Furthermore, a policy that requires buffer areas around wetlands of a sufficient size in order to ensure the biological integrity and preservation of the wetland that they are designated to protect has been provided. Additionally, wetland buffer areas need to be protected from adverse impacts. A number of wetland protection policies have been provided that do this, but a specific policy that addresses this is Policy 7.3.1-8, which states that new development shall be sited and designed on the most suitable portion of the site while ensuring protection and preservation of natural and sensitive site resources by preserving and protecting riparian corridors, wetlands and buffer zones.

Protection of Coastal Resources is an important aspect of the Coastal Act. The exceptional resources that can be found along the California coastline need to be protected so that future generations may be able to experience them. The ability to experience these resources is enhanced by the location,

as Dana Point Harbor serves as an excellent location for the general public to learn and experience the California coastline. However, no such policies have been included that will protect Coastal Resources. Only if modified to include the above discussed policies can the LUP Amendment be found to be in conformance with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act.

**i. Locating New Development**

The LCP must contain policies that will protect coastal resources from adverse development. With no policies to protect against adverse impacts to scenic and visual resources, infrastructure, and paleontological cultural resources, adverse impacts to coastal resources can occur. Development must also be sited so that hazards are avoided and minimized.

A number of policies have been provided in the revised plan as modified by Commission staff, which would protect coastal resources from adverse development. For example, a policy that states that the County of Orange will assure that additional development is compatible with existing uses and enhances the scenic, recreational and visitor opportunities for the area. Additionally, a policy that has been provided states that the Dana Point Harbor Revitalization Plan has been developed with the specific intent of promoting Coastal Act compliance, by enhancing public access opportunities, providing updated visitor-serving commercial and marine recreational amenities and promoting coastal resource preservation throughout the Harbor. Also, in order to encourage the use of green building standards, a policy is included stating that these will be used for development in the harbor. Furthermore, to protect against the possibility of bird strikes due to the use of clear materials, a policy has been provided that states that if enclosures used to shelter outside eating areas are designed using clear materials, they shall be etched or tinted to make them visible to birds and with awnings or covers that are integrated into the architectural design of the buildings.

The location of new development can also result in adverse impacts upon coastal resources. Therefore, policies have been provided that require new development to be sited so that adverse impacts to coastal resources are avoided. One such policy that has been provided, states that the location and amount of new development should maintain and enhance public access to the coast. Also, a policy stating that new development shall be sited on the most suitable portion of the site while ensuring protection and preservation of natural and sensitive site resources by providing for things such as protecting areas that provide important water quality benefits and preserving and protecting riparian corridors, wetlands and buffer zones. Additionally, another policy requires new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion,

geologic instability, or destruction of the site or surrounding area or in any way that would require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

To deal with the potential hazards upon new development from sea level rise and other coastal hazards, policies have been provided that states that all applications for new development will be reviewed for their potential threats from these hazards and that new development should be designed and sited to avoid hazardous areas and minimize risks to life and property from sea level rise, coastal and other hazards. Additionally, a policy is included that requires new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Policies have also been provided that clarify the process of obtaining a coastal development permit, once the LCP has been approved. For example, a policy that states that after certification of the LCP, a coastal development permit for all development within the coastal zone, subject to exceptions provided for under the Coastal Act as specified in the LCP has been provided. Furthermore, policies have been provided that clarifies that any landside area development necessitates a coastal development permit from the City, while any waterside area development requires a coastal development permit from the California Coastal Commission.

The Coastal Act states that scenic and visual resources must be protected to protect the scenic beauty of the coastal landscape as a resource of public importance. Thus, policies reflecting this have been provided. Along Pacific Coast Highway (PCH) views of the Dana Point Harbor area are limited as a result of development on and along the coastal bluffs. However, there are a number of public vantage points from Doheny State Beach, the bluffs surrounding the harbor and from other public areas such as Street of Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point. Anticipated development will have some impacts upon views from those areas, but those impacts will not be significant. The eastern portion of Dana Point Harbor is partially visible from PCH across Doheny State Beach, including the eastern jetty and portions of the shipyard area of the Harbor. While views will be modified from the anticipated dry storage facility, these views are already partially obstructed by the jetty and existing landscaping. To minimize any visual impacts, policies have been provided. Although certain views from the public parks located north of the Harbor along the bluffs will be somewhat altered by the implementation of the anticipated planned dry boat storage facility, policies have been provided to minimize view impacts from these public viewpoints. Current views of the water and boats in the water from the intersection of the

Street of the Golden Lantern and Dana Point Harbor Drive are blocked due to existing landscaping and buildings. The Street of the Golden lantern is anticipated to be realigned to the east from the intersection with Dana Point Harbor Drive to accommodate direct access into an anticipated parking deck and surface parking areas. This anticipated realignment of the Street of the Golden Lantern will provide a view of the east marina with the commercial buildings located to the east and west of the street. Anticipated improvements to Dana Point Harbor Drive include the potential future realignment of the road to eliminate the roundabout adjacent to the Youth and Group Center. The views from the eastern portion of the roadway looking south and west may be partially obstructed by the development of the new multilevel dry stack-boat storage building. However, because of the existing landscaping and boat storage within this area, it is not anticipated that the views will substantially change, as a result of anticipated harbor improvements. In order to assure that no significant view impacts occur and that scenic and visual resources are protected, several policies have been provided. A policy that ensures development within designated and proposed scenic corridors is compatible with scenic enhancement and preservation and shall not significantly impact views through these corridors has been provided (Policy 8.4.1-2). Additionally, a policy that requires the protection and enhancement of public views to and along the coast through open space designations and innovative design techniques has been provided. A policy has also been provided that will include a graphic depicting the view corridors found within the harbor. In addition, a policy is included requiring that site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. Also, a policy regarding height limits of allowed development has also been provided that states that all new development will not exceed 35-feet in height except for the anticipated boat storage facility that will be sixty-five (65) feet; the anticipated Commercial Core area (Planning Area 2) buildings fronting on the Festival Plaza or structures fronting the East Marina Boat Basin (Planning Area 10) that will be a maximum of sixty (60) feet; and the Visitor-Serving Commercial (Planning Area 3) building(s) that will be a maximum of fifty (50) feet (Policy 8.5.1-3). However, these heights are only allowed to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced. **Also, any proposed buildings, excluding the dry stack storage building, need to be consistent with the character of the area.**

The Coastal Act considers the protection of natural landforms, including coastal bluffs, important since natural landforms are an essential part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance. A policy that preserves significant natural features as part of new development has been provided. Additionally, the policy states that permitted development shall be sited and designed to minimize the alteration of natural landforms. To preserve Dana Point's bluffs

as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development, the following policies have been provided: drainage will be directed away from the bluff edge and towards the street, where feasible; the prohibition of permanent irrigation systems and the use of water intensive landscaping within the setback area to prevent bluff erosion; only allowing bluff repair erosion control measures, such as retaining walls, to protect coastal-dependent uses or existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs; and prohibiting development on the bluff face, except for drainpipes.

Policies have also been provided in order to deal with signs so that they are designed and sited to minimize visual impacts to coastal resources.

Development should be sited so that risks due to hazards are minimized. Thus, the policies have been provided that accomplish this. For example, a policy that states that beach erosion should be reduced by minimizing any human-caused activities which would reduce the replenishment of sand to the beaches. In addition, policies are provided that require new development to be sited and designed to avoid the need for new shoreline and bluff protective devices; however if protective devices are necessary to protect existing development that they be designed and sited to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply. The threat of sea level rise has also been addressed in policies regarding that sea level rise be considered in the design of new development (Policies 8.6.5-1 to 8.6.5-3). Due to the uncertainties about future sea level rise, policy 8.6.5-2 requires that a range of likely and extreme rises in sea level be used in the planning phase to assess project sensitivity to future water levels, identify possible consequences to the development and the surrounding area if the anticipated sea level is exceeded, and determine the minimum acceptable amount of future sea level rise that can be used for design purposes. Policies that deal with potential threats to development from tsunamis, rogue waves, storm surges and Seiches, hurricanes, tropical storms, coastal erosion, geologic, seismic, and fire have also been provided.

Policies regarding infrastructure and utilities and the protection of paleontological and cultural resources and air quality have also been provided.

The Coastal Act contains policies that prevent uncontrolled development from adversely impacting Coastal Resources. Development should be located so as to avoid adverse impacts to scenic and visual resources, infrastructure, and paleontological cultural resources. In addition, development should minimize risk to hazards. Protection of Coastal

Resources is an important aspect of the Coastal Act. Such policies are necessary to protect development from adversely impacting coastal resources that are abundant especially in the location of Dana Point Harbor. However, adequate policies have not been included that will prevent impacts to coastal resources from adverse development. Only if modified to include the policies identified in the suggested modifications can the LUP Amendment be found to be in conformance with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act.

### **3. CONCLUSION**

Therefore, for the reasons outlined above, the Commission finds that only if modified as suggested, can the proposed LUP Amendment be found to be consistent with Sections 30210, 30211, 30212(a), 30212.5, 30213, 30214, 30220, 30221, 30222, , 30223, 30224, 30230, 30231, 30233, 30234, 30235, 30240, 3025030251, 30252, 30253, 30254 and 30255 of the Coastal Act

## **IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a Local Coastal Program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Dana Point LCP Amendment 1-08 consists of Land Use Plan Amendment.

On January 10, 2006, the Orange County Planning Commission and on January 31, 2006, the Orange County Board of Supervisors certified Program Environmental Impact Report (DEIR) 591, which is a project and program level EIR, (SCH# 2003101142) for the Dana Point Revitalization Project. A number of Mitigation Measures were included in the EIR. For example, existing aboveground utilities will be removed and placed underground wherever and whenever possible; new building design will include storm water collection systems; and pedestrian linkages will be created between Harbor amenities, such as the Pedestrian Promenade and linear park.

As outlined in this staff report, the proposed LUP Amendment, as submitted, is inconsistent with the Chapter 3 policies of the Coastal Act. However, if modified as

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suggested, the LUP 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 LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request 1-08 if modified as suggested herein. Any non-exempt development identified in the LCP amendment will require a coastal development permit prior to construction. At that point, any project-specific impacts will be evaluated and addressed consistent with Coastal Act and LCP requirements.

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STATE OF CALIFORNIA  
COASTAL COMMISSION

CERTIFIED COPY

CITY OF DANA POINT	)	LCP Amendment DPT-MAJ-1-08
DANA POINT HARBOR	)	Dana Point Harbor
COUNTY OF ORANGE	)	Revitalization Plan
	)	LUP Only

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Fragmented Portion:  
Commissioner Discussion  
Following Close of Public Hearing

Thursday  
October 8, 2009  
Item No. 22.a.

Oceanside City Council Chambers  
300 North Coast Highway  
Oceanside, California

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A P P E A R A N C E S

COMMISSIONERS

Bonnie Neely, Chair  
William A. Burke, Vice Chair  
Khatchik Achadjian  
Steve Blank  
Larry Clark  
Steven Kram  
Patrick Kruer  
Ross Mirkarimi  
Esther Sanchez  
Mary Shallenberger  
Mark Stone  
Sara Wan \*

STAFF

Peter Douglas, Executive Director  
Hope Schmeltzer, Staff Counsel  
Jamee Jordan Patterson, Deputy Attorney General  
Sherilyn Sarb, Deputy Director

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1 California Coastal Commission  
2 October 8, 2009  
3 Dana Point LCP Amendment DPT-MAJ-1-08  
4 Dana Point Harbor Revitalization Plan (LUP only)

5 \* \* \* \* \*

6 5:50 p.m.

7 [ Fragmented portion -- Commissioner Discussion Only ]

8 CHAIR NEELY: Thank you, staff, and there is a  
9 point of order from Commissioner Shallenberger, did you have  
10 something?

11 COMMISSIONER SHALLENBERGER: Yes, just a point of  
12 order, I had to leave the room for a short period of time  
13 during the public testimony, but, I was in the back room  
14 which does have both the sound and the screen of this hearing  
15 room, so I didn't actually miss anything of the hearing, even  
16 though I wasn't presently in my chair.

17 CHAIR NEELY: All right, thank you.  
18 Commissioner Clark.

19 [ Noise Interference ]

20 COMMISSIONER CLARK: By the way, that is not my  
21 Blackberry.

22 COMMISSIONER WAN: It is somebody's.

23 COMMISSIONER CLARK: Not mine, mine is off.

24 EXECUTIVE DIRECTOR DOUGLAS: Somebody has a  
25 Blackberry on, and every time it receives a message it

1 disturbs our system.

2 **CHAIR NEELY:** Commissioner Clark.

3 **COMMISSIONER CLARK:** Thank you, Madam Chair, first  
4 let me -- and I am sure other Commissioner will join in this  
5 when they have an opportunity to talk on this -- let me  
6 really compliment our staff. You have done a tremendous job  
7 here. This is a well deserved compliment to our staff, to  
8 our Deputy Director, to our Long Beach leadership, and to our  
9 staff. This is a tremendous amount of body of work that has  
10 been put into this. I want to compliment you on working with  
11 the county, and with the city, and with the applicants, as a  
12 whole, in working through so many areas of policy that will  
13 affect the revitalization of Dana Point Harbor.

14 For 41 years, I have had the enjoyment as a  
15 southern California resident to enjoy Dana Point Harbor, and  
16 it is time to revitalize this harbor, I absolutely see that.

17 I would like to see us focus our discussion on  
18 areas of concern by Commissioners, and questions. Clearly, a  
19 lot of the heavy lifting has already been worked out for us  
20 here, and I believe we can come to a successful conclusion,  
21 in terms of an adoption of a CDP.

22 So, let me start the questioning, and I am going  
23 to ask the Chair, after other Commissioners who desire to  
24 speak on this topic, to come back to me for a motion.

25 **CHAIR NEELY:** All right.

1           **COMMISSIONER CLARK:** But, let me start with a  
2 question, just to refresh all of us, to our staff, on Policy  
3 4.2.2-6, as indicated in the final comments, Sherilyn, you  
4 mentioned that if the Commission is of a mind to move the net  
5 loss to a maximum of 209, you would recommend substituting  
6 just the number in the language that is on page 39 of 63 of  
7 our amendments.

8           **DEPUTY DIRECTOR SARB:** Excuse me, that was  
9 actually revised in the addendum, so you should be using the  
10 language that is in the addendum.

11           **COMMISSIONER CLARK:** Well, that is what I am  
12 looking at, it says the addendum.

13           **EXECUTIVE DIRECTOR DOUGLAS:** This is the addendum.

14           **COMMISSIONER CLARK:** I am looking at the addendum,  
15 I am looking at the addendum, but my question to you is, can  
16 you refresh our memory as to why the staff had taken the  
17 position of a net loss of slips not to exceed 155? what was  
18 the 155? what was the derivative, so everybody understands  
19 that?

20           **DEPUTY DIRECTOR SARB:** The applicants indicated to  
21 us that there was a recent configuration --

22 [ Noise Interference ]

23           **COMMISSIONER CLARK:** Somebody has got a device.

24           **DEPUTY DIRECTOR SARB:** There was a reconfiguration  
25 available in the existing footprints of the harbor that would

1 take into consideration the need to upgrade to ADA standards  
2 and new design considerations, that would meet the same slip  
3 ratio, and would result in no more that 155 slips lost within  
4 that harbor. So, that is the number that we have assumed is  
5 the minimum that would have to be lost, if they did not take  
6 into consideration any expansion area.

7 We also have been given the indication that there  
8 would be expansion area available, so perhaps that 155 might  
9 be able to be recouped, and there could be no net loss, while  
10 retaining the same footprint desired, and meet the ADA  
11 standards, and the design requirements.

12 **COMMISSIONER CLARK:** Okay, thank you.

13 And, then, could we call Brad Gross up, then? I  
14 would like to ask him a series questions, and then turn the  
15 mike to other Commissioners for their questions in areas of  
16 concern here.

17 Mr. Gross, you said to us, in rebuttal, that the  
18 one area -- which is the area we have just been talking about  
19 in disagreement with staff, in terms of conditions in the LUP  
20 amendment -- is the potential maximum number of boat slips  
21 lost, and you have, in fact, you have given to all of the  
22 Commissioners some revised language that would suggest you  
23 want a range between 155 and 225, and you have just told us  
24 that is to give design flexibility. What kind of design  
25 flexibility, when staff has indicated -- you have told the

Exhibit #1  
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1 staff that there may be an expansion area which could recoup  
2 some of the berthing areas, which would, perhaps, result in  
3 no net loss, so can you explain that?

4 **MR. GROSS:** I can, thank you, Commissioner Clark.  
5 Brad Gross, City of Dana Point Harbor.

6 Our goal, obviously, is to increase boating  
7 opportunities anywhere we can. Right now the plan that we  
8 have before us simply addresses the slips within the  
9 footprint of the harbor. We have done everything that we can  
10 to increase the slip opportunities within the footprint of  
11 the harbor.

12 There are some additional opportunities that are  
13 beyond the footprint of the existing harbor, namely, in the  
14 anchorage area in the east end of the Harbor, over by our  
15 fuel dock. We have, in the design, a plan to construct some  
16 temporary docks. Part of that temporary construction, we  
17 have discussed turning them into permanent docks after we  
18 have shown that they actually work and are a viable option.

19 Right there is the opportunity for us to have some  
20 additional slips, but the fact is that that is still subject  
21 to an Army Corps of Engineer's permit. It is their property,  
22 so to speak, a navigable channel, and it is a federal  
23 anchorage. So, all of the other opportunities that we are  
24 looking for are in different facilities within the harbor,  
25 federal anchorages and navigable channels. Now, we can

Exhibit #1  
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1 utilize them temporarily, but to turn them into a permanent  
2 opportunity will take some more work on our part, and we  
3 believe that the 8 years that we are planning to have this  
4 construction project going on will show that it is a viable  
5 operation. We want to insure that whatever we put forth  
6 today is something that we can actually do.

7 When I talk about the design and engineering  
8 flexibility, again everything that we have laid before the  
9 Commission is at a 50,000-foot level, and when you get down  
10 to the CDP, we may find that we have, maybe, a hard rock  
11 where we can't dredge enough for one of the larger boats, we  
12 are going to put a smaller slip there, or vice a versa. I  
13 just don't know what is going to happen in the future, and I  
14 am just trying to give the engineers who are working a little  
15 bit of flexibility.

16 That being said, if 209 is the number, we can  
17 probably hire some really good engineers with really sharp  
18 pencils, and stick to that number, but we are looking some  
19 type of range, and the 155 to 225, we believe is appropriate.

20 **COMMISSIONER CLARK:** Okay, there were a number of  
21 questions, and -- if you will - concerns by some of the  
22 Boaters Association members, let me ask a few questions on a  
23 couple of the areas that they raised.

24 Recognizing that, perhaps, some of the questions  
25 were CDP level, areas, but some of them, I think, deserve

1 discussion here at the Commission, on the LUP Amendment, and  
2 that is, let's start with the shipyard.

3 The shipyard is currently -- if I understand it  
4 correctly -- 2.6 acres in size, and the proposal here is to  
5 reduce it to 1.6. What happens to other acre, and why?

6 **MR. GROSS:** Right now, the leasehold for the  
7 shipyard is 2.6 acres. They utilize 1.2 acres for shipyard  
8 operations. That is actually the operations at their  
9 building, their haul-out facility, and their working area,  
10 and .4 of an acre they utilize for parking, which equates to  
11 the 1.6 acres.

12 The other acre, right now, is utilized for dry  
13 boat storage, storing of materials, maybe staging of a vessel  
14 that is going to be going into the water. We believe that  
15 that dry boat storage needs to be maintained, but we would  
16 like to be able to operate that dry boat storage through our  
17 dry boat storage, the county's own and operated operation, so  
18 we would like to incorporate that one acre into the dry boat  
19 storage option we are providing for the public right now.

20 **COMMISSIONER CLARK:** There was an area of concern  
21 by at least one, if not more, of the members about what  
22 happens to the day use vessels, and concern that they are not  
23 really addressed in this, and what is your response to that?

24 **MR. GROSS:** This will remain parking for day use  
25 vessels. There will be a reduction of about 24 spaces --

1 Am I heading in the right direction, John? John  
2 Conklin, one of my consultants here.

3 **MR. CONKLIN:** [ Out of hearing range ]

4 **MR. GROSS:** There will be a slight reduction in  
5 the day use vessels, but there is still the opportunity to  
6 launch and park their vehicle with trailer in the marina, in  
7 the launch ramp area.

8 One of the opportunities we will be able to  
9 increase with that is the elimination of a free-standing  
10 retail store, where we should be able to use some, about 90  
11 different spaces, flexibly, for either day use launching or  
12 dry boat storage.

13 **COMMISSIONER CLARK:** There was a concern  
14 expressed, again, from this community about commercial  
15 parking not trumping land boat uses. What is your reaction  
16 to that?

17 **MR. GROSS:** As Sherilyn said the staff report and  
18 the policies outline the parameters for the parking. It  
19 outlines the parameters for the required amount of parking  
20 for the slips that we have there, at .46 spaces per slip. It  
21 outlines all of the parameters for what we are going to be  
22 able to get, make available for the marina.

23 The other parking that is going to be utilized  
24 there is for not just commercial but public access. We have  
25 more than 2 million people who visit the harbor every year

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1 who are not boaters, and that additional parking is going to  
2 be public access for them.

3 **COMMISSIONER CLARK:** There was concern, and it was  
4 discussed in your rebuttal, and our staff's final comments,  
5 about the ramp and the vehicle parking areas, and if I under-  
6 stood you correctly, the concern was that the spaces for the  
7 launching ramp, vehicle parking area would go down from 440  
8 to, perhaps 260, that was what was shown to us by one of the  
9 concerned boaters.

10 You indicated that that is not consistent with the  
11 current planning, can you explain that?

12 **MR. GROSS:** I can, and the number that we have  
13 been able to calculate -- and it was presented by Roger  
14 Beard, the President of the Boaters Association, as 516.  
15 Those are the number of spaces that we have right now for dry  
16 boat storage within our facility, and it includes the one  
17 acre for the shipyard use, so it is 516 spaces.

18 Our new plan provides for -- another staff report  
19 mentions -- 493 spaces, so we do have a reduction right  
20 there, but I don't know, the other numbers, I couldn't follow  
21 that map with the other numbers, so respectfully, ask to  
22 stick to the numbers we have, that we have always calculated,  
23 and the fact that the Dana Point Boaters Association has  
24 calculated that, we started at 516 and end up with 493.

25 **COMMISSIONER CLARK:** And, is it true that the

1 design, as currently envisioned, would not have back in and  
2 back out issues?

3 **MR. GROSS:** The design that we have modified,  
4 because the original design did have some of those issues --

5 **COMMISSIONER CLARK:** Right.

6 **MR. GROSS:** -- and we actually went down and we  
7 did our markings on the pavement, to see where the issues  
8 were, and the modifications that we made -- again these are  
9 CDP level modifications -- but, we have come up with some  
10 other preliminary designs that allow for a majority of the  
11 spaces to be drive through. There will still be the  
12 opportunity for the back in and back out, but those will be  
13 utilized for trucks that are launching kayaks, small vehicles  
14 that are launching jet skis. One of the wonderful  
15 opportunities that we have at our launch ramp is that we are  
16 staffed every day of the year is open, so we can work with  
17 programming and helping our visitors and the users by  
18 directing them to specific areas for parking, or launching.

19 **COMMISSIONER CLARK:** Okay, thank you.

20 Madam Chair, thank you. I request that you come  
21 back to me after the rest of the Commissioners have had time.

22 **CHAIR NEELY:** Thank you.

23 Commissioner Kram.

24 **COMMISSIONER KRAM:** Brad Gross, could you come up,  
25 please. Thank you, and you could have just stayed there, I

1 think.

2 **MR. GROSS:** Wishful thinking, thank you.

3 **COMMISSIONER KRAM:** I, too, want to commend staff  
4 on their excellent job, was very complicated, very tough  
5 issue, and thank everyone for coming down. Obviously,  
6 everybody, there are a lot of passionate people about  
7 boating.

8 You know, I am a small boater, small boat owner,  
9 boater, and I really understand the concern about the small  
10 boaters being squeezed out, so that a loss of these spaces is  
11 something that I think is a really important thing to  
12 address.

13 When we admit -- you talked about a ratio of boats  
14 over 32 feet, and the boats under 32 feet, that they are on a  
15 waiting list, could you just state that again, about what the  
16 mix is, in terms of people wanting to come in.

17 **MR. GROSS:** I can, and thank you, very much,  
18 Commissioner Kram.

19 Our wait list, as of right now, runs about 85  
20 percent of those on the wait list, are waiting for slips that  
21 are larger than 32 feet, in fact, 35 feet is the largest size  
22 that we have on our wait list.

23 The wait list size, or the increase -- or the  
24 demand on the wait list, 85 percent is between 35 and 45  
25 feet, and that is why, in the original presentations that the

Exhibit #1  
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1 Harbor Department did for the foot remix, we tried to  
2 increase that mid-sized range. We were never looking to  
3 increase the large size range, and in fact, the slip  
4 alternative 3.50 reduces the number of slips over 50 feet, by  
5 5 percent. It does reduce the number of smaller slips, but  
6 we do have vacancy at that size.

7 So, our attempt is to accommodate those that are  
8 on the wait list, and have been on the wait list for the  
9 longest periods of time.

10 **COMMISSIONER KRAM:** So, just then to say, 85  
11 percent are between 32 and 40?

12 **MR. GROSS:** And, 45.

13 **COMMISSIONER KRAM:** Oh, 45, so the other 15  
14 percent?

15 **MR. GROSS:** Are larger, actually.

16 **COMMISSIONER KRAM:** Are all larger.

17 **MR. GROSS:** Are all larger.

18 **COMMISSIONER KRAM:** There is no wait list for  
19 small boaters?

20 **MR. GROSS:** We have about 70 vacancies in the  
21 harbor right now, and all of those vacancies are 26 feet or  
22 less, so anybody who is watching on line, and you need a  
23 slip, call us at the Dana Point Harbor.

24 **COMMISSIONER KRAM:** So, despite the fact that you  
25 don't have a wait list, I do think as the economic conditions

1 change, you know, things change over the next 10 years, I  
2 want to make sure that the public and we provide affordable  
3 access, because, for new boaters, and smaller boat owners,  
4 and I think it is really an important thing.

5           Would you be amenable to a plan that came up with  
6 some way to give some sort of preference to smaller boaters?  
7 so that the small boat owner, who came along, and you didn't  
8 have a wait list would get one of those, you know, spots  
9 where there is that net loss?

10           **MR. GROSS:** Absolutely, that is something that we  
11 can put a policy together, and of course, have to run it  
12 through our county counsel, make sure the Department of  
13 Boating and Waterways is in approval, but we can, obviously,  
14 easily do something like that.

15           **COMMISSIONER KRAM:** Okay, well, I would like to  
16 come back to that, later.

17           **CHAIR NEELY:** Okay, thank you.

18           Commissioner Wan.

19           **COMMISSIONER WAN:** Yes, staff, because I have a  
20 number of questions. I would kind of like to deal with some  
21 of little issues, first, and then I will go on to some of the  
22 more major issues, and want to get to.

23           I think these are issues our staff has done, as  
24 others have said, a magnificent job. First of all, the  
25 improvement even between last time and this time is

1 significant, and if anybody looks at that, for somebody --  
2 our staff had to, basically, write all of those modifica-  
3 tions, is like a total rewrite, and given our staffing  
4 constraints, I find it amazing, but there are a few little  
5 things that didn't necessarily get incorporated.

6 I would like to go to one of my favorite subjects,  
7 tree trimming policy, and want to add into the language that  
8 is there, a statement of the purpose for which there is a  
9 tree trimming policy, and we have done this elsewhere, and  
10 that is the tree trimming, or tree removal shall be conducted  
11 in a manner that insures the long term protection of habitats  
12 for birds that are listed in the other policy that refers to  
13 the birds, so that would be 7.1.2-2, and incorporate into  
14 that, even though I don't know if there are any owls or  
15 raptors in the area, but to incorporate that into them, those  
16 birds into the list of birds to be concerned about, and I  
17 want to find out if that is okay with you, and then I will  
18 ask my staff if it is okay with them.

19 **MR. GROSS:** That sounds great to me, thank you,  
20 Commissioner Wan.

21 **COMMISSIONER WAN:** I will eliminate that, okay.  
22 There is no policy on lighting, and lighting can  
23 have an affect, so particularly, lighting from here should  
24 not be directed -- you don't want big spotlights, and  
25 sometimes that happens -- put on open coastal waters, or

1 anything that would affect the marine preserve area, so if we  
2 could incorporate something like that into it, if it is not  
3 already there, I didn't find it, okay.

4 Okay, and, then the other thing is, I figured out  
5 what the "only" was for.

6 **MR. GROSS:** We tried, but did we get it in the  
7 right spot?

8 **COMMISSIONER WAN:** Yes, I think you did, and it  
9 had to do with seawalls, and saying that seawalls are only  
10 permitted to protect existing developments, or coastal  
11 dependent development, so if it is okay with our attorneys, I  
12 would like to put that back in.

13 Is that okay with you?

14 **MR. GROSS:** Absolutely, if it okay with your  
15 attorney?

16 **COMMISSIONER WAN:** It is okay.

17 And, let's see, and I think those are the kinds of  
18 little ones, so now, let me get to the sort of the over-  
19 arching majors.

20 **CHAIR NEELY:** Staff wanted to just comment.

21 **DEPUTY DIRECTOR SARB:** Yes, we could incorporate  
22 those into our recommendations.

23 **COMMISSIONER WAN:** Yes, that is what I was hoping  
24 you would say, okay, all right.

25 So, now let me get to the sort of more major

1 issues, which Commissioner Clark and Commissioner Kram have  
2 touched on.

3 Now, you can sit down for awhile.

4 **MR. GROSS:** Thank you.

5 **COMMISSIONER WAN:** I, also, agree that this harbor  
6 needs revitalization, and I went down there, and frankly my  
7 impression of it was that it is bursting at the seams, great,  
8 but it really --

9 [ Audience Response ]

10 But, our task here is to see that the revital-  
11 ization is consistent with the policies of the Coastal Act,  
12 commercial development is fine, but that is not coastal  
13 dependent, and that is not our issue. Our issues are that we  
14 provide, make sure that the harbor provides adequate boating  
15 facilities and boating areas for the full range and full  
16 spectrum of those boating, from the small guy with the kayak,  
17 to the 45 and 50, you know, the bigger boats, okay, that we  
18 protect public coastal access and recreation, and that we  
19 protect coastal dependent and marine uses, such as fishing,  
20 all right. These are the kinds of things that we need to be  
21 dealing with, and those needs have to be what drives the  
22 overall Land Use Plan designs, not the commercial develop-  
23 ment.

24 If you need space for parking, you can't be  
25 restricted from putting it in, because you need space for the

1 commercial development. If you need the space for the  
2 parking, you need to use it, and if that may mean, in the  
3 end, that there is less commercial development, that is the  
4 way it is going to have to be.

5 [ Audience Response ]

6 I would prefer that you limit that, okay.

7 So, my concern, then, goes to first the small slip  
8 loss, and is going to happen, a certain amount of it. I  
9 understand the 155, if you are going to redesign the harbor,  
10 and to the slips, to deal with ADA, and the fact that boats  
11 now are a little bit wider than they used to be, it is going  
12 to result in some loss, but I agree that you need to at least  
13 keep as a policy goal, that your goal is for no net loss, and  
14 that keeps it to a minimum, so that should certainly stay in.

15 I don't have a problem with a loss of 155 slips  
16 for these needed purposes. I haven't heard anything yet that  
17 convinces me that we would go over, certainly, not over 209,  
18 but I am not sure of that, and I will listen to the  
19 discussion as to whether we need to go between 155 and 209,  
20 but I would suspect that we should try, at least, to step  
21 down for 155, okay.

22 Another big issue, but that will involve the loss  
23 of some smaller boats, and as I said, when you lose the slips  
24 for the smaller boats, the guys who have got the 20 and  
25 25-foot boats, what happens to them? they, then start to

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1 trailer their boats, and there needs to be places for them,  
2 if you are going to trailer your boat -- and I used to have a  
3 boat of about 20 feet, and I had a trailer, so I have an idea  
4 of what it means to back in a boat on a trailer, and it is  
5 not easy.

6 We need to have adequate trailer parking spaces,  
7 and I keep hearing about, well, first of all, as it is now  
8 designed we need to have bigger spaces, and I do agree that  
9 the size of the boat and trailable spaces, needs to go up,  
10 because of the way boats are designed nowadays. But, I don't  
11 think that needs to mean that we need to lose a number of  
12 spaces, and right now I don't know how they have come up with  
13 the calculations, according to the numbers that staff has  
14 given me, we are at a loss of about 42 spaces.

15 Regardless, well, you said something like there is  
16 currently 324 spaces, and -- yes?

17 **DEPUTY DIRECTOR SARB:** It depends on whether you  
18 are talking about boat storage spaces.

19 **COMMISSIONER WAN:** No, I am talking about -- I  
20 sent you an email on relative to trailable spaces.

21 **DEPUTY DIRECTOR SARB:** The existing 324.

22 **COMMISSIONER WAN:** Right, right, so I would like  
23 to see a policy change, language that says that we shall  
24 maintain the existing number of trailerable boat spaces, and  
25 that the minimum size of those boat spaces should be 10 by

1 40. If it turns out that that means you need more than 5.7  
2 acres to go it, that is the kind of design change that I am  
3 talking about, that should be driving this, then you may lose  
4 some acreage some place else, if that is what happens, and it  
5 may have to come out of the commercial, but that is the kind  
6 of thing that we need to set as a policy, is that we don't  
7 allow the small boat owner to be pushed from every direction,  
8 loss of slips, loss of trailerable spaces, and loss of dry  
9 boat storage.

10 And, by the way, as a small boat owner with a  
11 trailer, I would have hated to have to put mine in a dry  
12 stack -- I mean dry storage, but not in a dry stack is bad  
13 enough, but in a dry stack, that creates a serious problem  
14 and it is very hard to use that when you just feel like, oh,  
15 it is the last minute, and I feel like going out for the day,  
16 you can't do it, if it is a dry stack, as you have got to  
17 make an appointment, and that is no what we ought to be  
18 forcing on people, so you are hitting the small boat guy from  
19 every single direction, and I don't think that is acceptable  
20 in the design of a harbor, where the principle use of the  
21 harbor is the boats, and the boating, okay.

22 So, I am a little concerned about even a loss of  
23 dry stack area, and dry storage, 30 or 40 spaces is not  
24 humongous, but we certainly can't allow the loss of trailer-  
25 able spaces.

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1           The other question I have, I do have a question  
2 for staff, and then I am going to turn it over and see what  
3 other Commissioners think about -- these are major issues.

4           The boat barn for dry stack is going to go in the  
5 acreage, that one acre, that is currently now for the  
6 shipyard, is that correct? No? where is it going?

7           **DEPUTY DIRECTOR SARB:** It was in Planning Area 1,  
8 but it is in the MSC area, and it is not necessarily in that  
9 one acre footprint.

10          **COMMISSIONER WAN:** Okay, some gentleman came up,  
11 and said that where the boat barn is to go, currently is the  
12 place where kayaks are stored, is that correct?

13           You can come back up and answer that.

14          **MR. GROSS:** Thank you, very much, Brad Gross, City  
15 of Dana Point Harbor.

16           No, the boat storage building that is in the plan  
17 right now is going right on top of where surface storage is  
18 now, so it will take up the footprint of about 100 spaces,  
19 where there is 100 dry boat storage spaces right now, so that  
20 those spaces eliminated will be on the lower deck, and we  
21 will do 100 more on each deck above that.

22          **COMMISSIONER WAN:** And, where -- in fact I wrote  
23 his name down -- Steven Frye, as he made some comment about  
24 the loss of the area for currently used for the storage of  
25 kayaks.

1           **MR. GROSS:** No, Ma'am, that is not accurate.

2           The area that he is talking about -- and I should  
3 mention that we do have kayak storage in our dry boat storage  
4 area right now, along with kayak storage down at the west end  
5 of Baby Beach.

6           If you will look at the -- and I can't get a slide  
7 up, but we did give you a little binder, and if you look at  
8 the first page it outlines the LCP. The one with the yellow  
9 binding.

10           **COMMISSIONER WAN:** I have so many things here.

11           **MR. GROSS:** I am going to try to direct you.

12           **COMMISSIONER WAN:** Okay.

13           **MR. GROSS:** If you will follow the water, go to  
14 the top corner near the water, that is where the dry boat  
15 storage building will be, right on that corner.

16           The one-acre storage that belongs to the shipyard,  
17 you see the white square, and that is the shipyard building,  
18 and that will go -- their storage is right adjacent to that.  
19 It is actually, if you will flip through your diagram, your  
20 pamphlet, it might be easier to look at page -- and I  
21 apologize to --

22           **COMMISSIONER WAN:** I remember where the boat yard  
23 was because I went and visited it, so.

24           **MR. GROSS:** Page 10 has it all outlined.

25           **COMMISSIONER WAN:** Okay, so here is my question,

1 and then I am going to ask Mr. Frye to come up and explain  
2 what he said.

3 And, that has to do with where were you planning  
4 to do storage, provide storage --

5 No, Brad, you can stay here.

6 -- where were you planning on providing storage  
7 for kayaks, because allowing kayak users and hand launched  
8 vehicles for boats is important, and that is the lowest end  
9 of the spectrum, and they shouldn't be eliminated, so I need  
10 to be sure that there is going to be a provision for where  
11 they are to be located, at a place that is convenient for  
12 them to launch, because they can't launch every place.

13 **MR. GROSS:** Absolutely, and thank you for that  
14 question.

15 I'll start in the west end of the harbor, the Baby  
16 Beach area, where we have dry boat storage available right  
17 now, today, for boaters, and there is a launching area right  
18 down the beach. Part of our plan in the future is to build a  
19 launch, a hand launch, dock in the area. We do have some  
20 public docks there that they can utilize, if they want to  
21 launch, at the dock. Now, these are county owned docks, and  
22 they are available for the public to use.

23 Also, the whole perimeter of the harbor, right  
24 now, we have kayak and small boat storage racks that are  
25 available to the boaters that are in the harbor.

1                   In the west end, where our Embarcadero Marine is,  
2 right now, we have a launch ramp storage, also. If you store  
3 your kayak there, you can actually drive in, park in the  
4 facility, and that is why you will see vehicles parked in  
5 that launch ramp area, is because they are accessing their  
6 kayaks. They can walk down, with the launch ramp, they can  
7 walk down a dock and launch, they can walk down -- we do have  
8 a vision of putting in new dock there that is specifically  
9 for hand launches.

10                   So, we have all of those opportunities now, and we  
11 actually have provisions in our future planning to make some  
12 more accessible hand launch docks. The different between a  
13 regular and a hand launch dock is that hand launch docks are  
14 only about 5 inches off of the water, and a regular dock is  
15 about 18 inches, so we do have those plans right now.

16                   **COMMISSIONER WAN:** And, the storage right now.

17                   **MR. GROSS:** And, the storage right now, and we will  
18 have more of the storage. You are absolutely right,  
19 Commissioner Wan, it is one of the fastest growing storage  
20 opportunities that we see, in fact, we just built storage  
21 racks for stand-up paddle boards, and I think we are probably  
22 going to be one of the first facilities to have stand-up  
23 paddle board storage racks, and I'll tell you that I had  
24 those designed because I am a stand-up paddler and I needed a  
25 place to store my board at the harbor.

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1           **COMMISSIONER WAN:** Okay, since he only had a  
2 minute, and I listened to this gentleman, I do want him to  
3 explain to me what he was saying.

4           Mr. Frye, I think you were the gentleman who  
5 discussed this.

6           **MR. FRYE:** I think I was, Commissioner Wan, and  
7 thank you so much for your attention to detail, we all  
8 appreciate that, it is very important.

9           I was discussing today the situation of these  
10 other --

11          **CHAIR NEELY:** Please state your name for the  
12 record.

13          **MR. FRYE:** My name is Steven Alan Frye.

14          **CHAIR NEELY:** Thank you.

15          **MR. FRYE:** I was talking about the situation at the  
16 west end of the harbor, at the other end from the  
17 Embarcadero, the Embarcadero being the primary focus for  
18 today's discussion.

19                 The Baby Beach area is at the opposite end, and  
20 now Brad is right, there are some dry boat storage racks, not  
21 at Baby Beach, and not conveniently located, but further up,  
22 and I don't know how many feet it would be, and Brad could  
23 estimate, but it would be many hundreds of feet from the Baby  
24 Beach area. It is not a convenient area, although there are  
25 some that you can rent, that are racks, relatively far

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1 removed, so my comments were specific to the Baby Beach or  
2 west end area.

3           **COMMISSIONER WAN:** Okay, thank you, and it may be  
4 that what we need is some sort of policy that wouldn't  
5 conflict with what you are saying to me, that we need some  
6 kind of general policy that says that there will be  
7 provisions for kayak storage, and in areas that are  
8 convenient to the launching, and that is the kind of -- we  
9 don't need to specify where they are, but we do need to  
10 specify that they need to be there.

11           **MR. FRYE:**\* We are fine with that. I actually  
12 think the addendum had some vague language in that direction,  
13 if you need more exact language, we are not opposed to that,  
14 at all.

15           **COMMISSIONER WAN:** Okay, so let's make that as  
16 tight as we can, in terms -- if that is okay with staff, and  
17 it is okay with you, to make sure that whatever goes in there  
18 is adequate to provide storage space for the hand held --

19           **MR. FRYE:** And, to hand launch boats.

20           **COMMISSIONER WAN:** -- yes, and convenient to their  
21 launching, because if it is too far away, I don't know how  
22 you drag it very far, so that -- a policy will help.

23           Thank you.

24           **CHAIR NEELY:** Is that good for now?

25           **COMMISSIONER WAN:** Yes.

1                   **CHAIR NEELY:** Commissioner Kruer.

2                   **COMMISSIONER KRUER:** Thank you, Madam Chair.

3                   First of all, I would like to, again, join the  
4 other Commissioners, I think that this was not only a  
5 excellent staff report, but I am incredibly impressed with  
6 the amount of detail that you put into this Local Coastal  
7 Plan Amendment, and I tend to agree with almost every point,  
8 almost every point in what your staff recommendation is.

9                   What is interesting is, also, I think you have  
10 pointed out something that is very important. As I always  
11 say, in development,\* the devil is in the detail, and I think  
12 there is another chance for all of the boaters who are here  
13 today, for this project or against this project, to be able  
14 to weigh in, and be able to see how ultimately it will affect  
15 the parking, the commercial core, and everything else,  
16 because everything is sort of -- you start from the water-  
17 side, you should, and if you can determine your baseline of  
18 how many slips, at maximum, you will lose, and for me the  
19 maximum I would try to push, because in engineering you  
20 always find some more space, and you get a little more  
21 creative, and do things.

22                   Maybe the numbers should not exceed 155, but you  
23 start there, and that reduces some parking, gives some more  
24 ability, and the average length of 32 feet doesn't concern me  
25 at all. I think, of all of the marinas that have come through

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1 the Coastal Commission lately, planned, this is the lowest  
2 average, and to create -- and I am concerned, just like the  
3 other Commissioners, of keeping this affordable component to  
4 the boaters, but believe me, almost 50 percent, or 49.8 below  
5 30 feet is quite an achievement.

6 And, I think that I would like to publicly say  
7 that I think the county and the City of Dana Point has really  
8 moved this in the right direction, because a lot of other  
9 people it is 37, it is 38, it is much higher length. They  
10 say it can't work, and that is the only way to do it.

11 Now, as far as the minimize to the net loss of  
12 slips, as I said, I think that if you start out, and if you  
13 set that number as staff is recommending at the 155, and you  
14 set the maximum length at 32, then that moves a lot of  
15 things, that drives that.

16 As far as the commercial core, it is okay to show  
17 that now, but obviously, when you come back for the CDP,  
18 parking is a real driver of commercial development, and you  
19 boaters that are there, to and for the project, that is when  
20 you want to make sure that there is adequate parking by the  
21 types of -- again, the devil is in the detail -- what type of  
22 tenants are you going to have? are you going to have  
23 restaurants? are you going to have this, what is the mix of  
24 that look like, because restaurants take a much higher  
25 parking requirement than a lot of the other things.

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1           And, where I see government and planning boards,  
2 and everything, trip up sometimes, is that they -- again, my  
3 belief is parking drives everything, and you have to know the  
4 types of uses, and everything, and that is what you want to  
5 do when you come back to the commercial core, after you see a  
6 blueprint, and how the boating works, et cetera.

7           And, if I were the boaters, I'd probably want some  
8 commercial core, so long as it didn't affect my use and  
9 enjoyment, and let's get a very fine -- this project is  
10 probably \$120 million project, looking at it, and it to get  
11 that type of revitalization, I commend Orange County and the  
12 city for trying to achieve that for the public, and for the  
13 citizens, and I think you are going to have a lot of  
14 opportunities to weigh in.

15           Now let me get to a couple of the other points the  
16 Commissioners will talk about. Commissioner Wan has raised  
17 some very good points. I agree with her. I want to get to  
18 the launch ramp spaces. I just want to point out, now, under  
19 the proposal, staff recommends, et cetera, is that you are  
20 right now, presently, there is less than 10 percent that  
21 meets the 10 by 40 requirement, and under this new plan, the  
22 footprint, approves that up to almost 95 percent, so there is  
23 a big improvement, and we have got to give them credit for  
24 that in the launch area.

25           And, again, what is going to decide the detail on

1 how this works is with these guidelines is that you are going  
2 to have to have a parking management plan, somewhere, and you  
3 are going to have to see, again, how this works, how this  
4 circulation works, how everything is going to move through  
5 here, and again, that takes more planning to do that.

6 On the issue of the shipyard, with all due  
7 respect, my recommendation is what staff is talking about, I  
8 would leave it the way it is, and go with their recommend-  
9 ation. My understanding, if it is wrong, somebody can  
10 correct me, but there is approximately a year or so left on  
11 the leasehold. I don't think it is the Coastal Commission's  
12 job to enter in and create some opportunity, or change of  
13 use, or give someone without the city and the county weighing  
14 in what they want to do with the plan, and hopefully they  
15 will keep working with the leasehold elder, as the lease  
16 comes up, but I don't think we should preempt any type of  
17 negotiations that go on, I think that is not in the Coastal  
18 Act, and we shouldn't be doing that.

19 I am excited about the possibility of some  
20 commercial core, again, depending on the parking works, and  
21 the design with the minimum of spaces lost, there is 155, and  
22 because, again, with the design requirements, and handicap  
23 requirements, and all of the things today, that is probably a  
24 very good job if you can redesign everything and only end up  
25 with a net loss of 155. The other Commissioners, I would

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1 like to hear from them on that.

2 I think what is exciting to me, from a planning  
3 perspective is when you revitalize something like this, and  
4 again you work with all of the boaters, and I think, again, I  
5 am so impressed, when you talk about local governments  
6 working, and having 103 outreach meetings, again, I think  
7 that is remarkable what the city and the County of Orange  
8 have done to work with everybody on this.

9 There is always areas that are controversial, but  
10 in the end, I have a feeling that this is going to turn out  
11 to be a great project, and I think all great projects have  
12 some components, especially when near the water, of where you  
13 have visitor serving, you have this interplay of linear areas  
14 of where pedestrian and other people can come down and enjoy  
15 the public access.

16 Briefly, from what I have seen so far, it  
17 certainly opens up public vistas, and I like what they are  
18 trying to achieve, and I would say, again, we should go  
19 forward and approve this Local Coastal Plan Amendment today,  
20 and then work very much, the staff will, again, they have  
21 done a tremendous job on this, and it is very difficult, but  
22 I think I agree 100 percent with staff on their recommend-  
23 ation.

24 Thank you.

25 **CHAIR NEELY:** Thank you.

1 Commissioner Achadjian.

2 **COMMISSIONER ACHADJIAN:** Thank you, Madam Chair, I  
3 think most of my questions have already been asked.

4 But, for clarification, let me take my time also  
5 to thank and give kudos to all involved, not just our staff,  
6 but the harbor's, and appreciate seeing the elected officials  
7 taking time to be here, and especially those who probably  
8 took a day off from their work, and gave up that income to be  
9 here, and your voice is heard, appreciate that more than us  
10 Commissioners being here.

11 But, for clarification reasons, Mr. Gross, if I  
12 can -- it is simple question. You gave us a percentage for  
13 the vacancies for the small boats, can you turn that into a  
14 number?

15 **MR. GROSS:** No, it was a number, about 70 slips,  
16 on average, in the harbor right now, 26 feet and less are  
17 vacant.

18 **COMMISSIONER ACHADJIAN:** Okay, because I am trying  
19 to see the impact of the losing 155, and plus 70 that will be  
20 the impact of what will happen to the small boats.

21 And, I want to go back to Commissioner Kram's  
22 simple -- or our need to how we can address that issue?

23 Thank you.

24 **CHAIR NEELY:** All right, thank you.

25 Commissioner Sanchez.

1                   **COMMISSIONER SANCHEZ:** Thank you, I am also  
2 concerned about the loss of slips, loss about affordable  
3 opportunities. I think that staff has spent a lot of time  
4 looking at this, and 155, while normally I wouldn't -- I  
5 mean, to me that is a huge number, but I understand the  
6 rationale for getting there, in terms of ADA and some longer,  
7 yes, design for longer boats.

8                   I do have some concerns about the .6 versus .75 on  
9 the parking. I have some concerns about maintaining launch  
10 ramps and parking for boaters nearer the launch ramps. That  
11 is something that, when we had changes to our harbor, that  
12 was a huge issue, to insure that the parking was near the  
13 launch ramps.

14                   Concerned about the 10 by 40-foot spaces, there  
15 were some, definitely some comments regarding that, as well  
16 as traffic design problems, concerned about dry boat  
17 stacking, what somebody affectionately called dry stacked  
18 boat barns.

19                   I would also maintain the shipyard at its current  
20 acreage. There were some comments from the public concerned  
21 about intensification of commercial uses, perhaps, that it  
22 would lead to negative impacts to boating and other water  
23 recreational activities.

24                   I am very happy that staff has included language  
25 to protect visitor accommodations, the Marina Inn, from

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1 conversion to limited use overnight visitor accommodations on  
2 public tidelands.

3 And, lastly, I would like to address height. My  
4 visits to Dana Point -- and I planned on going this past  
5 week, and I didn't get a chance to, but I don't see how -- I  
6 know that the 65-foot request is for the boat stack building,  
7 but the up to 60 feet is for the commercial buildings, and I  
8 feel that that is not consistent with the existing community,  
9 and I am concerned about those visual impacts.

10 I heard nothing that would require 60-foot  
11 commercial buildings to support the request. In my mind, 60-  
12 foot buildings would lead to higher demand for non-boater  
13 parking. The depictions that were presented to us, to the  
14 Commission, seemed to actually meet the current 35-foot  
15 height limitations. I don't feel that I have enough  
16 information to support the height expansions.

17 And, again, I am concerned about negative impacts  
18 to higher density development on traffic and parking, and  
19 basically on the boaters.

20 Those are my comments.

21 **CHAIR NEELY:** Thank you.

22 Commissioner Mirkarimi.

23 **COMMISSIONER MIRKARIMI:** Thank you, Madam Chair, I  
24 will also stand with Commissioners in commending staff for a  
25 solid report, and just to note I have seen Dana Point, and

1 the harbor, and I agree that I think it needs to be  
2 revitalized, although I want to make sure, though, that it is  
3 not out designed for people who struggle to want to afford to  
4 stay there and enjoy and recreate in the way that they have  
5 for years already.

6 And, so it concerns me, from a perspective of  
7 somebody, like myself, who grew up in a small boating town in  
8 New England, where we would work on boats, and work off of  
9 boats, from a working class means of what it meant when the  
10 slips would go up in costs, and when the ability to try to  
11 live off of the land, and off of the water, became  
12 prohibited, because of development that would push us out.  
13 So, I can emphasize with people who, even from a recreational  
14 perspective might feel a little bit pushed.

15 So, I have seen questions, maybe Mr. Gross can  
16 come back.

17 So, I understand the need to sort of make room for  
18 the larger boats, but from a Coastal Commission perspective,  
19 it is the advent of larger boats that gives me a bit of a  
20 chill the same way the SUVs do, that dominate our roadways,  
21 or other gas guzzling kind of vehicles, that if you are  
22 making room for larger boats, and the stat is that there is  
23 less demand for the smaller slips of 26 feet, or under, then  
24 in terms of being sensitive to those who have smaller boats,  
25 but yet don't have room for the smaller slips, so if you

1 don't have room, in the event that that would occur, would  
2 you charge based on the use of the larger slip for the entire  
3 slip? or would you charge based on the size of the boat in  
4 that larger slip?

5 **MR. GROSS:** That is a good question, and that  
6 would be a policy question for our board of supervisors.

7 I can tell you from my background in the industry  
8 standards, the industry standard charges for the length of  
9 the boat, or the length of the slip, whichever is greater.  
10 So, what we would charge would be dependent on board policy,  
11 direction that we have received from the board of  
12 supervisors.

13 But, what I can tell you, if I could comment on  
14 your one issue about the smaller boats, and the larger boats,  
15 that is a perception. From what you may consider a larger  
16 boat is not actually a larger boat, in today's industry.

17 When the marinas in California were built between  
18 the 60s and the 80s, the entry level boat was about 25 feet.  
19 That is why right now we have about 60 to 70 percent of our  
20 marina, our slips 26 feet and less, and you see that up and  
21 down the coast.

22 What has happened over the years, and similar to  
23 what you have seen with some of the vehicles, is that the  
24 entry level boat they have been more efficient in building,  
25 they have been a little bit more economical, they have got a

1 little larger.

2           What we are looking for is not to increase the  
3 size of the larger slips. In fact, as I have said before,  
4 there is a 5 percent decrease in the first 50 feet and less.

5           What we are trying to do, is accommodate today's  
6 mid-level boater, which is what most of our boaters  
7 eventually go to. We will still have 50 percent of the slips  
8 in the harbor 26 feet in length, or less than 30 feet. So,  
9 we will still be able to accommodate them. What we are  
10 trying to do is to accommodate that next level of boaters,  
11 and not the high end\*.

12           **COMMISSIONER MIRKARIMI:** No, and I get that. I  
13 mean, it would more satisfy me in this discussion, but that  
14 is not just on you, it is sort of on the whole process, that  
15 if we were to have a debate about 2 versus 4 stroke engines,  
16 diesel versus gas, you know, and the impact on water quality,  
17 I would love to have that discussion, but that is not the  
18 data that is in front of us.

19           And, I think that, you know, from our obligation  
20 here, whatever we can do to eliminate, I think, any kind of  
21 adverse impacts by motor crafts, is exactly what we should be  
22 doing here and insist upon.

23           So, when I hear people say they would like greater  
24 latitude and capacity for human launched vehicles, and then  
25 there might be a push towards areas that are more compact, or

1 less clear, because as you said it is a little vague, and  
2 when somebody says it is a little vague, I would then push  
3 for a condition that it is more exact, and that there would  
4 be greater areas beyond the Baby Beach, whether on the west  
5 end or somewhere strewn along the area, for the capacity of  
6 more human launched vehicles.

7 You had intimated that that was something you  
8 would consider, but I didn't quite hear that deal sealed.

9 **MR. GROSS:** Well, again, as the harbor director, I  
10 can tell you that we can work in that direction. A lot of  
11 what we would propose, as far as additional dock space,  
12 storage space, would have to be retro our board, and through  
13 a public process. We are a public agency, and what I would  
14 propose to this Commission right now is that -- and as I  
15 actually spoken to Mr. Frye about -- his vision of increasing  
16 the use of hand launched opportunities in the west end, is  
17 something that I find attractive, Brad Gross finds  
18 attractive, Brad Gross is the director who finds it  
19 attractive, but we are a public operation.

20 We do have other stakeholders in the area, and I  
21 would open it up that we would do a public outreach, a proper  
22 public outreach, to ask what our stakeholders are looking for  
23 in those types of opportunities, with the key being that we  
24 would like to develop these types of hand launched  
25 opportunities in the area, or even expanded in the harbor,

1 and then open it up to a public process.

2 If we do that, we will be back before the  
3 Commission at some time with the CDP, if it is on the water,  
4 we will be back to the City of Dana Point if it is on the  
5 land, to discuss just that, but we are not opposed to any  
6 additional boating opportunities for hand launched vessels in  
7 the harbor.

8 **COMMISSIONER MIRKARIMI:** And, then, as it was  
9 brought up by another Commissioner, too, about the  
10 practicality of launching for smaller boats from a trailer,  
11 but the trailer launch seemed just a little bit impractical  
12 the way that I heard the answer, of how to unload the boat,  
13 and then have parking for the trailers, themselves. Not,  
14 that I am into really more parking, and I liked the .6, by  
15 the way, I thought that was a better move, overall.

16 How is that going to be then accounted for, in the  
17 event, again, trailers need to be stored, it is unlikely that  
18 on the dry storage that is going to really be the contingency  
19 that is going to be workable, I think, in the way that that  
20 has been presented. So people are transitory, moving in and  
21 out, trailers still need to be stored, where? because that  
22 wasn't clear on how you were going to accommodate that.

23 **MR. GROSS:** That is a great question, and thank  
24 you, Mr. Mirkarimi.

25 Progress is being made in leaps and bounds on dry

1 boat storage. If we go to dry boat storage, there will be  
2 opportunities for storing not only the boat, but the boats on  
3 their trailers. You have to understand the dry boat storage  
4 is basically storing volume, and they are storing in squares.

5 Old dry boat storage has been done on what they  
6 call bunkers. They just take the boat off of the trailers,  
7 and stand it on long pieces of wood, where it sits right now.

8 Some of the modern facilities we have been looking  
9 at actually have turn tables, they have boxes, so to speak,  
10 just like you would store a shipping containers, so those  
11 opportunities will be there. We have had some discussions  
12 with our regular boat storage people right now, and actually  
13 we have been to a couple of conferences together, where we  
14 look at all of those different opportunities.

15 Again, CDP level design elements that we would be  
16 discussing at that time, and I believe that we need to have  
17 that type of opportunity for people to store their boats on  
18 their trailers in the dry boat storage.

19 But, again, it will be an opportunity for people  
20 who want to purchase a new boat, or used boat, that don't  
21 want to have that added expense of a trailer, who will have  
22 the opportunity to actually store their boat without a  
23 trailer, also. So, there will be some opportunities for both  
24 types of storage in the dry boat storage.

25 **COMMISSIONER MIRKARIMI:** And, then, switching --

1 and I know this isn't directly right before us, but it is  
2 relative -- on the regional property, the commercial  
3 property, the owner is whom?

4 **MR. GROSS:** The county, but state recognizes the  
5 county is the operator of the facility.

6 **COMMISSIONER MIRKARIMI:** And, they set the actual  
7 cost? the lease cost then, to occupy it?

8 **MR. GROSS:** Yes.

9 **COMMISSIONER MIRKARIMI:** So, is there any part of  
10 that dividend from the county that goes to -- if there is an  
11 infusion of commercial development, is there anything that  
12 goes towards mass transit? the creation of transit, so that  
13 then it deflects away from the reliance solely on the auto-  
14 mobile?

15 **MR. GROSS:** Actually, all of the revenue generated  
16 within the harbor stays within the harbor. If we need to  
17 supplement a, for example -- I will give you an example. We  
18 do special events right now, and we provide free shuttle  
19 service, and we pay for that shuttle service, so yes, what  
20 you are asking about, mass transit, which would service up  
21 into the city, we wouldn't be able to support that entirely,  
22 but if there is a component that we are responsible for, that  
23 we benefit from, we can supplement that.

24 **COMMISSIONER MIRKARIMI:** Thank you.

25 **MR. GROSS:** If I could just make one comment, and

1 I wanted to clarify one issue here, you talked about the 155  
2 slip loss. I think it is important for the Commission to  
3 know that if we build that design, we do not increase the  
4 average size of the boats in the marina. We have done that  
5 design configuration, and actually that average size, which  
6 is 32 feet, and in the staff report right now, that size goes  
7 down to 30 feet, so if we were to build that, we wouldn't  
8 actually have additional larger boats beyond the 32 feet, and  
9 right now we would have, on average, a slip size of 30 feet.

10 **CHAIR NEELY:** Thank you.

11 The next speaker is Commodore Burke.

12 **COMMISSIONER BURKE:** Commodore Burke, now that is  
13 funny. I notice that Clark has a hat and he isn't near the  
14 deck, okay.

15 Now, while we are congratulating our staff, I  
16 think we ought to congratulate the County of Orange, Orange  
17 County, because in any hearing that we have had since I have  
18 been on this Commission, when it came to marinas, we have  
19 never, never, ever, ever experienced a public outreach by  
20 government agencies that this organization has gone to.

21 Now, if I could get someone to come up to Marina  
22 del Rey and give us some lessons, I hope Supervisor Knabe is  
23 watching today.

24 And, you know this, the Dana Point Harbor is a  
25 very sensitive subject with me, because I was a young man

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1 when it was built, and both the harbor and I got old  
2 together, and we are going to approve a plan here to  
3 revitalize Dana Point, Dana Harbor -- you got the message,  
4 there is no plans for Burke, here.

5 There are a number of little items here that I  
6 would like to speak on, and I know the hour is getting late,  
7 so I won't run this into the ground, but there are some  
8 things that some of the Commissioners spoke about, some of  
9 the technology has changed since they had their experience,  
10 and I think that is very important when you are talking about  
11 slip costs.

12 I have been fairly lucky in life, and I made a few  
13 dollars, but slip costs ran me out of boating. I was paying  
14 \$7,000.00 a month for slip costs, \$7,000.00 a month, so let  
15 me tell you, I don't care how much money you have, if you let  
16 them run the slip costs up, it will make you watch more  
17 football on TV, than go out and enjoy the ocean.

18 I was always jealous of you guys at Dana Point,  
19 because from Dana Point to the marlin grounds it is the  
20 shortest run from a harbor anywhere in California, out to  
21 that bank just beyond Catalina, and I used to run into some  
22 of you who are in this audience today out here, and see you  
23 fishing and recreating out there. And, in those days, I was  
24 chairman of the California Fish and Game Commission, and I  
25 was the complaint department on my boat. So, I rowed up and

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1 I took many complaints about fishing licences, and short  
2 halibut and all of the rest of the complaints.

3 I was really interested when Commissioner Wan was  
4 talking about when she was boating, and she had to park the  
5 trailer. Now, I would have paid money to see that -- I know  
6 you did. But you know, this is a drive through trailerable  
7 parking, and the mention of that just changed trailering  
8 boats, because even the most -- the size of it can't be  
9 reduced, because there is no backing up if you really design  
10 it so it is drive through.

11 So, I think that that is important that we realize  
12 that they are talking about drive through, and if they have  
13 enough spaces there, and I think that comes back -- and when  
14 the CDP comes back, we will actually know that. If they have  
15 the drive through scheme there, that is absolutely fabulous.

16 Dry stack storage, and Supervisor Mirkarimi was  
17 talking about dry stack storage. I, about 2 years ago, I  
18 tried to take Peter Douglas down to Florida -- at my expense  
19 -- to show him because Florida is the most advanced state in  
20 the Union in dry stack storage. They have some dry stack  
21 storage down in Florida that I wouldn't mind living in, it is  
22 really something to see. But, Peter thought there might be  
23 an ethics problem so he never would go.

24 We have a project coming towards us right now, in  
25 Marina del Rey, which the dry stack storage, you just leave

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1 your boat there, and you can call 20 minutes before you get  
2 there, an hour before you get there, or 10 minutes, they drop  
3 your boat in the water, it is washed, it is gassed, and if  
4 you want they will even put provisions on it. Now, that kind  
5 of dry stack storage, that is the future, because as water  
6 space become more valuable, we are not going to be able to  
7 slow down the escalation to the big boats, because the big  
8 guy is going to win every time.

9 So, to protect people who are -- like me -- coming  
10 from the senior citizens home in these days, we are going to  
11 have to have a method by which there is an economical way  
12 that we can produce space for people to get to the ocean,  
13 whether it is a hand launched craft, or a small motor boat.

14 Now, when this issue started coming up about a  
15 month or so ago, I started calling around to various boating  
16 manufacturers, because I -- you know, I couldn't tell if it  
17 was that I got old, or things had really changed, because  
18 that is a problem with getting old, you think, the way you  
19 did it is the way it is supposed to be --

20 **COMMISSIONER ACHADJIAN:** You must be getting old,  
21 you forgot what you promised before you started talking to  
22 us.

23 **COMMISSIONER BURKE:** There are some here even  
24 older than me.

25 And, I found out from the Boating Manufacturers

1 Association -- that we all know the adds on the fiberglass  
2 boating changed for the world. Wood boats are a collector's  
3 item now, and even though my last boat was a wood boat. So,  
4 those boats, those small boats, those fiberglass boats, are  
5 now serving on rivers and lakes, and that is where you will  
6 find those 15 and 20-foot boats in large scaled numbers.

7 So, one of the problems we have is that the  
8 industry is going by their marketing studies, and their  
9 marketing study says you have to go this way, our mandate  
10 under the *Coastal Act* says, hey, wait a minute, you have got  
11 to stay down here, and leave some ability for people with  
12 smaller boats to have access to the ocean.

13 So, I think that that, when the CDP comes back,  
14 that is a major issue, and I think that you have just got to  
15 give them -- they talked about the hotel today, that is CDP  
16 also. And, let me tell you, affordable boating is an  
17 oxymoron, I mean, you just -- I wrote so many notes here.

18 I think that, you know, when we talk about the  
19 number of boat slips -- and I will conclude with this -- I  
20 think that Commissioner Kram really had an excellent  
21 suggestion, because our desire here is to serve the public,  
22 and make sure that they are provided access.

23 So, you know, I am not a design guy. I like a lot  
24 of space on both sides when I pull into the slip, but, so I  
25 don't know -- I know that with handicapped, the regulations

1 today, that you will never remodel some place and not have  
2 some kind of slip loss.

3 So, I don't know if it is 155, or 209, or 225, but  
4 I do know that if you go with 209, and you say, that a  
5 priority must be given, like Commissioner Kram was saying,  
6 priority must be given to smaller boats. If, if you put a  
7 larger boat of -- you have got to put a smaller boat in  
8 larger slip, even if a larger boat is there and wants to rent  
9 it. Now, the Dana Harbor didn't understand that concept at  
10 all, when Kram started saying that, because, you know, that  
11 is counter to their economics, but it does serve the Coastal  
12 Act. It does provide the guaranteed space for small boat  
13 owners, if you make sure that you put in this permit that  
14 they have a priority. So, I really think that that was a  
15 great idea.

16 So, that is all the notes I have, and thank you  
17 for putting up with me.

18 **CHAIR NEELY:** Thank you.

19 Commissioner Stone.

20 **COMMISSIONER STONE:** Thank you, and I have to  
21 follow that!

22 In a grievous sort of common thread that has gone  
23 through here, about the slip costs, and that certainly is one  
24 of the largest drivers here. I am not too worried about,  
25 ultimately, the size of the slips, because that ratio seems

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1 to be reasonable in this context, but where we are forcing  
2 where decisions are made about the cost of the slip, that is  
3 driven by the size of the slip, now I am worried that we are  
4 pushing more and more boaters away to other options, and with  
5 the layout that has been done here, and trying to make sure  
6 we are separating the broader planning issues with the CDP  
7 that will come to us eventually, some of the decisions that  
8 have been made, and some of the, you know, looking at the  
9 planning areas certainly raises some of those questions about  
10 what options are going to be available for smaller boaters,  
11 and other boaters. \*

12 And, I do really have to compliment staff on this,  
13 as a fairly new Commissioner each of the staff reports I have  
14 found to be very thorough, and easy to get through, and as  
15 complicated and as detailed as this issue is, it was fairly  
16 much easier than I would have thought to address some of  
17 these issues, or identify some of the issues in here, and  
18 staff's work they have done has really been tremendous work  
19 in isolating those issues for us, and allowing our job to be  
20 easier.

21 And, I really do appreciate the work that has been  
22 done down here by the local jurisdiction and their outreach  
23 to the community. It is remarkable, the amount of public  
24 input, and that really ultimately makes our job a lot easier  
25 in making some of these decisions around it, and so we have

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1 narrowed down some of the decisions, or the issues that we  
2 are addressing.

3 And, without getting into the specifics that we  
4 are going to see when we get to the Coastal Development  
5 Permit, as I look at, and listened to the discussion, and how  
6 this current planning mechanism, or how this current planning  
7 exercise has come into being, it does look like the  
8 commercial part of this, especially the visitor serving, and  
9 what they call the day use commercial, is pushing up against  
10 the more traditional boating aspects of it.

11 And, ever as I look, and what I struggle with, in  
12 just the land in the Planning Area 1, the shape of that is  
13 really impinging on the very south end the ramp, and it looks  
14 there like it is going to be very difficult to launch and  
15 retrieve boats from there, so I question what kind of flow  
16 can be done. And, we would see a traffic flow study, and we  
17 would see some parking strategies for the trailerable boats  
18 at the point that we are looking at the CDP, but if we are  
19 making a decision now about some of the, if you will,  
20 explicitly the shape of these planning zones, are we  
21 precluding flexibility, and are we precluding options that  
22 would result in a much better land use?

23 As to another case in point, an example would be  
24 the shipyard. I don't know that the 1.6 or the 2.6, what the  
25 right answer is at this point. For me, as long as in that

1 marine services zoning area there is enough flexibility that  
2 they can do the plan to come through and address an  
3 appropriately sized shipyard, given future needs, and that  
4 discussion is not really before us. There has been some  
5 discussion of analysis, but we are going to have to see in  
6 the Coastal Development Permit those decisions would have to  
7 be made later.

8 I am not too worried about the dry stack storage,  
9 probably some people will like that, and hearing the  
10 commodore talk about what they have done in Florida, and some  
11 of the other possibilities, that sounds intriguing. I think  
12 the technology and some of the other possibilities are really  
13 cool to think, but if you start looking at, if I am going to  
14 order my boat, and it is going to be washed, and be fueled,  
15 and be provisioned, now the cost to me is significant, and  
16 that is not, if we are creating a situation where we are  
17 driving up, or the plan is driving up the cost of boating  
18 which is expensive enough already, we are now closing the  
19 door to a lot of probably current boaters, and certainly  
20 future boaters who wouldn't be able to afford that.

21 Some mix of all of these solutions, I think, is  
22 what we would be looking for, and so the dry storage  
23 component, especially if the slip costs, given the changes,  
24 and unless there is a commitment on the board of supervisors  
25 here to charge only by the length of the boat, you know, that

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1 might be a way to address it, but again, that is not what is  
2 before us today.

3           There are ways that all of these solutions can be  
4 put together, but just looking at the footprint, I am not  
5 sure how you put all of that stuff together. And, in some of  
6 the materials, it talks about a marine store chandlery that  
7 is there, and I don't know if it has now come out of the  
8 plan, I don't know where that chandlery is going to be, so  
9 where do all of these boaters buy their equipment, and having  
10 been a boat owner, and having kept West Marine in business  
11 for several years, as any boater would, the proximity of that  
12 store, excessively that store to the boaters, and to the  
13 folks who are going to be in this marina is an important  
14 piece makes sense to me to have a marina -- I'm sorry, to  
15 have a chandlery in the marina, and that would be, I would  
16 think, in the servicing area, potentially.

17           Now, we are starting to cram more and more and  
18 more into a smaller and smaller area. I am not sure, really,  
19 what the answers are, but I think this raises a lot of it,  
20 the questions we have when we are looking at the broader  
21 planning picture, so that as we get to the ultimately to the  
22 permit decisions and look at some of the plans, that the  
23 plans will be able to be put together that address these  
24 issues, ultimately.

25           So, that is sort of where I feel a little bit of a

1 disconnect, and so my question then is, is the zeal for some  
2 of the commercial development kind of pushing the boating  
3 resources away, and it seems to me that that priority, those  
4 priorities are not necessarily set correctly.

5           And, again, as to the -- it was interesting to see  
6 the survey about how many day use vehicles, the hand launched  
7 human powered vehicles are out there, that was the most  
8 vehicles being used in the harbor at any given point. That,  
9 again, is probably more of a permit issue to insure that  
10 there are enough facilities for those kinds of uses, the  
11 stand up paddle boards, the kayaks, the small day sailors,  
12 and we saw lots of examples of those out in the harbor, and  
13 it is exciting to see that much use being made of these  
14 waterways, especially in the calm waters that are a great  
15 place for instruction and learning.

16           So, I think we are on the right track, clearly  
17 this is an area that needs revitalization, and would benefit  
18 this part of the state, would benefit the coast, and benefit  
19 the use of it, but let's make sure we are not forcing a  
20 decision that is going to create some things that will  
21 ultimately exclude uses down the line, by making decisions  
22 now that is going to preclude the kind of appropriate designs  
23 that we would foresee.

24           For example, I would hate to see them come -- see  
25 the permit request come back to us saying, well, we are going

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1 to have to cut even more of this parking, because when the  
2 LCP was updated, looking at the shape of this planning area,  
3 we just can't fit it in, and now we have done ourselves a  
4 great disservice.

5 **CHAIR NEELY:** All right.

6 **COMMISSIONER STONE:** That is the level of my  
7 concern.

8 **CHAIR NEELY:** Thank you.  
9 Commissioner Clark.

10 [ **MOTION** ]

11 **COMMISSIONER CLARK:** Thank you, Madam Chair, I  
12 move the Commission certify Land Use Plan Amendment No. 1-08  
13 to the City of Dana Point Local Coastal Program, as  
14 submitted, by the City of Dana Point, and recommend a "No"  
15 vote.

16 **COMMISSIONER WAN:** Second.

17 **CHAIR NEELY:** We have a motion by Commissioner  
18 Clark, and a "second" by Commissioner Wan, the maker and  
19 seconder are recommending a "No" vote. Failure of the motion  
20 will result in denial of the amendment as submitted, and  
21 adoption of the resolution and findings in the staff report.

22 Would you like to speak to your motion?

23 **COMMISSIONER CLARK:** Just that, if this passes, I  
24 have a subsequent motion to make.

25 **CHAIR NEELY:** All right.

1 And, Commissioner Wan?

2 **COMMISSIONER WAN:** No, not on this, in the next  
3 motion.

4 **CHAIR NEELY:** All right, and is there any  
5 objection to a unanimous roll call vote on this item?

6 [ No Response ]

7 Seeing none, the Commission hereby denies  
8 certification of the Land Use Plan Amendment No. 1-08 as  
9 submitted by the City of Dana Point.

10 To the next motion, Commissioner Clark.

11 [ MOTION ]

12 **COMMISSIONER CLARK:** Yes, thank you, Madam Chair.

13 I move the Commission certify Land Use Plan  
14 Amendment No. 1-08 for the City of Dana Point if it is  
15 modified as suggested by staff, inclusive of the policy --  
16 incorporation of the policy recommendations articulated by  
17 Commissioners during the hearing today, and recommend a "Yes"  
18 vote.

19 **CHAIR NEELY:** Okay, we have to articulate what  
20 those policies are.

21 **COMMISSIONER CLARK:** And, I will.

22 **CHAIR NEELY:** All right, we need that in the  
23 motion.

24 **CHIEF COUNSEL SCHMELTZER:** If you could articulate  
25 each one.

1           **COMMISSIONER CLARK:** Well, they were -- my  
2 understanding from staff is they incorporated them into the  
3 recommendation.

4           The ones that were -- my understanding -- were  
5 incorporated, were from Commissioner Wan, the tree trimming  
6 policy.

7           **CHAIR NEELY:** Oh, they have already incorporated  
8 those into the staff report, so you don't have to amend  
9 anything.

10          **COMMISSIONER CLARK:** Okay.

11          **CHAIR NEELY:** That is already in.

12          **COMMISSIONER CLARK:** Fair enough.

13          **COMMISSIONER WAN:** Then I will second the motion  
14 if it is, you know, as recommended by staff, and then you  
15 make amending motions, which is what you want to do.

16          **COMMISSIONER CLARK:** Well, no, I thought they were  
17 incorporated, so there is no need to do that.

18          **COMMISSIONER WAN:** Okay, unless somebody else  
19 wants to make an amending motion.

20          **CHAIR NEELY:** We have a --

21          [ General Discussion ]

22 -- motion, and a second, and this is regarding passage of  
23 this motion CDP will result in the certification of the Land  
24 Use Plan Amendment with the suggested modifications,  
25 including those that staff incorporated into their staff

1 report.

2 So, now are you saying you want to make an  
3 amending motion?

4 COMMISSIONER WAN: I would like to make an  
5 amending motion.

6 COMMISSIONER CLARK: Yes, I think Commissioner --

7 COMMISSIONER WAN: I think several people may want  
8 to make amending motions.

9 CHAIR NEELY: All right, and so the first person,  
10 I think, is Commissioner Sanchez, then Commissioner Wan, and  
11 the Commissioner Krahn.

12 [ MOTION ]

13 COMMISSIONER SANCHEZ: Okay, I would like to offer  
14 an amendment that would address the height, that the height  
15 of the structure shall be consistent with the community  
16 character of the area.

17 CHAIR NEELY: Okay, is this the time to have that  
18 incorporated, or is that more project related?

19 COMMISSIONER CLARK: It is on the CDP level.

20 DEPUTY DIRECTOR SARB: I'm sorry.

21 CHAIR NEELY: An amendment regarding height  
22 restrictions.

23 DEPUTY DIRECTOR SARB: I can speak to what is in  
24 the plan, if you would like to hear that.

25 It is Policy 851-3 and it does allow for a 65-foot

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1 height limits for the dry stack storage buildings. It allows  
2 60-foot height for the commercial core area, buildings  
3 fronting on the principle plaza, or structures fronting on  
4 the east marina boat basin, Planning Area 10, and it allows  
5 50-foot height limits for visitor-serving commercial  
6 buildings in Planning Area 3.

7 But, there is a provision that says these heights  
8 are only allowed to the extent that significant coastal  
9 public views through scenic corridors, and some scenic view  
10 points are protected and enhanced.

11 **COMMISSIONER SANCHEZ:** And, I would like to add  
12 that it be consistent with the community character of the  
13 area.

14 **DEPUTY DIRECTOR SARB:** That would be the  
15 appropriate place to add that.

16 **CHAIR NEELY:** Okay, so we have an amending motion.  
17 [ Inaudible ]

18 **EXECUTIVE DIRECTOR DOUGLAS:** I missed it, too.

19 **COMMISSIONER SANCHEZ:** It would be consistent with  
20 the character of the area.

21 **CHAIR NEELY:** Okay, we have an amending motion,  
22 and --

23 [ Inaudible ]

24 **CHAIR NEELY:** Yes, if we could wait just a minute,  
25 we will let you know what the answer is.

1           Okay, we have a motion by Commissioner Sanchez, I  
2 think a "second" by Commissioner --

3           **COMMISSIONER WAN:** No.

4           **CHAIR NEELY:** -- by Shallenberger, okay, and the  
5 maker and seconder are recommending a "Yes" vote.

6           And, staff would you like to restate then what the  
7 language would be?

8           **DEPUTY DIRECTOR SARB:** The paragraph reads:

9           "These heights are only allowed to the extent  
10 that significant coastal public views through  
11 scenic corridors, and from scenic view points,  
12 are protected and enhanced."

13          And, the buildings -- does that make sense?

14          [ Discussion ]

15          "From scenic view points are protected and  
16 enhanced, and consistent with the character  
17 of the area."

18          **COMMISSIONER SANCHEZ:** No, "b".

19          **DEPUTY DIRECTOR SARB:** Yes, and consistent with  
20 the character of the area.

21          **CHAIR NEELY:** Consistent with the community  
22 character? okay.

23          **DEPUTY DIRECTOR SARB:** Community character of the  
24 area?

25          **CHAIR NEELY:** Commissioner Burke has a question.

1           **COMMISSIONER BURKE:** Yes, I am prepared to support  
2 this, but unless lowering the level of the dry stack storage,  
3 slooshes [sic.] the building out so much that it decreases  
4 the parking.

5           **EXECUTIVE DIRECTOR DOUGLAS:** Right.

6           **COMMISSIONER BURKE:** Can we get the applicant up,  
7 just to let us know how that works?

8           **COMMISSIONER SANCHEZ:** I would go along with not  
9 including the dry stack. I am more concerned about the other  
10 buildings.

11          **COMMISSIONER BURKE:** Oh, oh, no problem, see how  
12 easy it is.

13          **CHAIR NEELY:** All right, we have an amending  
14 motion, and a second, to address the height of structures not  
15 including the dry stack, is that correct?

16          **EXECUTIVE DIRECTOR DOUGLAS:** Right.

17          **CHAIR NEELY:** Anybody else need a clarification?

18          [ No Response ]

19                 Is there any objection to a unanimous "Yes" roll  
20 call vote on this item?

21          [ No Response ]

22                 Seeing none, the amendment has passed.

23                 Okay, Commissioner Wan, you had an amendment.

24          **COMMISSIONER WAN:** I have an amending motion, add  
25 to 4.4.1-3 that there shall be no net loss of existing

1 trailer parking spaces.

2 COMMISSIONER MIRKARIMI: I'll second it.

3 CHAIR NEELY: Okay, we have an amending motion by  
4 Commissioner Wan, a "second" by Commissioner Mirkarimi, that  
5 there be no net loss of trails or parking spaces -- I'm  
6 sorry, what?

7 COMMISSIONER WAN: Trailer parking spaces.

8 CHAIR NEELY: It is a little late.

9 COMMISSIONER WAN: Late.

10 CHAIR NEELY: Okay, and yes, Commissioner Kruer.

11 COMMISSIONER KRUER: I just wanted to -- I would  
12 like to add --

13 [ Vice fades ]

14 CHAIR NEELY: Could you do it on the mike?

15 COMMISSIONER KRUER: There is, right now, so you  
16 are trying to keep the same, was it 324, whatever, and a 292,  
17 those were substandard spaces, my understanding was.

18 So, Commissioner Wan, what you are asking them to  
19 do -- I am not saying I object to it, but I want to clarify.  
20 If you just say the number of spaces. Right now, they have  
21 substandard spaces, so what is the spaces, what are you  
22 asking for?

23 COMMISSIONER WAN: I have inserted that into a  
24 policy that requires the change in the size of the spaces, so  
25 what this is probably going to do is to require a little bit

1 of additional area for the spaces.

2 What I am saying, is yes, I didn't change the  
3 language, that is a policy, a pretty long policy, and it  
4 includes a whole bunch of things about trailer spaces,  
5 including the increase of the 10 by 40 foot.

6 And, what I am saying is, and I am not removing  
7 that requirement, so this will probably result in a larger  
8 area for the trailer spaces, because it is going to do both.  
9 It is going to retain the existing number, and increase the  
10 size of spaces.

11 **CHAIR NEELY:** I wanted to clarify what the intent  
12 of your motion --

13 **COMMISSIONER WAN:** That's it.

14 **COMMISSIONER KRUER:** -- it isn't by just saying  
15 the number of spaces.

16 **COMMISSIONER WAN:** Right.

17 **CHAIR NEELY:** Okay, we have a motion and a second  
18 for another amendment regarding trails and parking spaces.

19 Commissioner Burke, you had another comment?

20 **COMMISSIONER BURKE:** No --

21 **CHAIR NEELY:** Trailer parking spaces, sorry.

22 **COMMISSIONER BURKE:** -- I am not, you know, I just  
23 want to know how that affects the overall plan.

24 **MR. GROSS:** It does affect the plan, thank you,  
25 Dr. Burke.

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1           We have allocated 5.7 acres for this space. We  
2 intend to allocate 5.7 acres for the space now, and we are  
3 trying our best to have 10 by 40 foot spaces in the entire  
4 area.

5           Commissioner Krueer is correct, the number of  
6 spaces we have right now are sub-par and smaller. If we --  
7 it is either, or, from cash perspective. If we try to  
8 accommodate the same number, then we can, but we would have  
9 to keep the same sizes. If we want to do all 10 by 40, there  
10 is an issue with the amount of space it is going to take.

11           **COMMISSIONER WAN:** And, I understand that -- go  
12 ahead.

13           **COMMISSIONER BURKE:** So, you are saying, if we  
14 keep them the same size, we can keep the same number?

15           **MR. GROSS:** Yes.

16           **COMMISSIONER BURKE:** So, even last week, if they  
17 were okay, what makes them no okay this week?

18           **COMMISSIONER WAN:** Well, I do believe that the 10  
19 by 40 increase to that size is important. And, I will go  
20 back to what Commissioner Stone said, what is happening here  
21 is, he is committing only the 5.7 acres, and that is bumping  
22 up against the need to protect the number of acres for the  
23 commercial development.

24           If you say that it has to increase in size, and  
25 you have to retain the same number of spaces, you are going

1 to have to allow a slightly greater area, and it will come  
2 out of other things, most likely the commercial, and this is  
3 exactly what I am -- and I don't do this not understanding  
4 that that is what might happen.

5 But, getting back to what Commissioner Stone said,  
6 that is what we all sort of -- certainly I agree with him, in  
7 terms of the design that we would like for things like  
8 trailer spaces, and dry boat storage, and all of the rest of  
9 that is bumping up against the limits created by the  
10 commercial development, which is not a coastal priority.

11 **COMMISSIONER BURKE:** I tend to agree with you, but  
12 --

13 Did you have something to say?

14 **MR. GROSS:** Well, I was just wondering, if we were  
15 to make that move, if we could go into the one acre we have  
16 on the shipyard side? the shipyard dry --

17 **COMMISSIONER BURKE:** Well, she didn't say where  
18 you had to put it, she just said you had to do it.

19 **CHAIR NEELY:** That's right.

20 **MR. GROSS:** If you could say that we have to do  
21 that within the boundaries of the LCP, we could probably find  
22 some space.

23 **COMMISSIONER BURKE:** Right.

24 **COMMISSIONER WAN:** Well, obviously, it is within  
25 the boundaries of the LCP, and I am not telling you where to

1 put it, that is correct.

2 **MR. GROSS:** Thank you, very much, Commissioner  
3 Wan. I appreciate that, but I think we would need to have  
4 the language specify that those additional spaces that we  
5 need may be found elsewhere within the boundaries of the LCP.

6 **CHAIR NEELY:** Yes, you can come back when you come  
7 for your CDP.

8 **COMMISSIONER WAN:** You can deal with that at your  
9 CDP level, that has to do with the details of your design.

10 **CHAIR NEELY:** Commissioner Krueer, did you have  
11 something?

12 **COMMISSIONER KRUEER:** No, I just wanted to clarify  
13 that, because I think that is very important, that you have  
14 that flexibility, that they have it, and you will have a  
15 better plan than just saying, let's add 24, 30, 32 spaces,  
16 that is going to take another half acre.

17 So, and I am not against what you are saying  
18 Commissioner Wan, but I think as long it is clarified that  
19 they can do it in other places, that is the smart way to do  
20 it, or else you will end up with a design like Commissioner  
21 Stone was talking about, where you just chop off the  
22 conductivity, and the nexus, where the trailers are to the  
23 core area of the commercial.

24 So, it is better to do it in a CDP.

25 **CHAIR NEELY:** All right.

1 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

2 CHAIR NEELY: Yes.

3 EXECUTIVE DIRECTOR DOUGLAS: Can I just ask for a  
4 clarification?

5 CHAIR NEELY: Staff, yes.

6 EXECUTIVE DIRECTOR DOUGLAS: The motion was to  
7 maintain the same number, but I think, if you want to go to  
8 the larger size, you will have to say the same number, and  
9 the larger size.

10 COMMISSIONER WAN: Okay.

11 COMMISSIONER KRUEER: That is what I asked.

12 COMMISSIONER WAN: Because it was the larger size  
13 was already included, and I was just adding this to that  
14 policy, I didn't think it was necessary. If you want to say  
15 that, that is fine.

16 EXECUTIVE DIRECTOR DOUGLAS: Well, we just wanted  
17 it clarified on the record.

18 COMMISSIONER WAN: Yes, that is precisely what I  
19 meant.

20 EXECUTIVE DIRECTOR DOUGLAS: Right.

21 COMMISSIONER WAN: I don't think we need a policy.  
22 We need to change the language dealing with the location. I  
23 think that is an issue that will come to us during the CDP  
24 process. I would prefer that it be located here, but I am  
25 open to seeing what the design will be.

1           **EXECUTIVE DIRECTOR DOUGLAS:** Yes.

2           **MR. GROSS:** If I may, please, one more point of  
3 clarification for this.

4           In the policy that we have agreed upon with the  
5 staff -- which is going to change now, and we are okay with  
6 that -- we have stated acreage, and the reason we stated  
7 acreage, because there are in the design we have now,  
8 conceptual design, 18 spaces that are smaller than that, and  
9 that is for safety design and engineering. So, there may be  
10 a space that we could put in a corner that is 10 by 30, and  
11 we want that flexibility.

12           So, if we could use the language originally  
13 suggested that 95 percent of the spaces are that size, so  
14 that we, at least, have that flexibility, so that we can cut  
15 a corner here and there just for safety reasons.

16           **COMMISSIONER WAN:** And, you have made a good  
17 point. We probably ought to eliminate the set acreage, but  
18 ought to give you the flexibility to use some of those  
19 smaller, sort of out-of-the-way places to fit in smaller, and  
20 that, I have no problem with.

21           **MR. GROSS:** We do have some size flexibility.

22           **COMMISSIONER WAN:** That is fine, but I do think  
23 you have brought up a good point about the issue of the total  
24 acreage, that should probably come out, because we now don't  
25 know exactly what the total acreage will be, and it may

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1 increase.

2 **MR. GROSS:** Okay, then, thank you.

3 **CHAIR NEELY:** All right.

4 Okay, do we need anymore clarification? anymore  
5 comments on this amendment?

6 Staff, are you accepting this, and is the  
7 applicant accepting this, so that we don't require a vote?

8 **DEPUTY DIRECTOR SARB:** I would actually like to  
9 just clarify.

10 **CHAIR NEELY:** Okay.

11 **DEPUTY DIRECTOR SARB:** In the existing Policy  
12 4.2.2-10 it indicates a redesign and expand the existing 5.7-  
13 acre boat launch facility, so that seems like that is what  
14 you are suggesting?

15 **COMMISSIONER WAN:** And, that is fine.

16 **DEPUTY DIRECTOR SARB:** And, that, I don't think  
17 needs to change.

18 **COMMISSIONER WAN:** Okay.

19 **DEPUTY DIRECTOR SARB:** And, then, in the Policy  
20 4.1-3 where you added the no net loss to the existing trailer  
21 parking spaces, we have language that indicates that they  
22 should be increased to the 10 by 40 feet to the greatest  
23 extent feasible, while taking into consideration the demand  
24 for large and smaller spaces. That was added because there  
25 was the recognition that some spaces need to accommodate

1 larger vessels, and there are some spaces that need to  
2 accommodate smaller vessels, like jet skis.

3 And, so as long as that is okay, that that is a  
4 consideration, and what you are adding to this policy, then,  
5 is that they can't lose any number of slips --

6 **COMMISSIONER WAN:** And, I think that is what Mr.  
7 Gross said, so long as he can have 95 percent go to a 10 by  
8 40, and 5 percent that goes to others, I think he is in  
9 agreement and I am in agreement with that.

10 **DEPUTY DIRECTOR SARB:** Okay, and so we --

11 **MR. GROSS:** Honestly, I think the language is  
12 acceptable that is in there now, gives us that flexibility,  
13 and we don't have to actually put a hard percentage number  
14 there.

15 **COMMISSIONER WAN:** And, that is fine, I think, and  
16 the exact plan is going to come back to us, and you know what  
17 we are looking for, so as long as you include in that policy  
18 of no net loss, that is fine with me.

19 Again, you need flexibility to deal with this, the  
20 acreage may change, and we will get a look at the final plan,  
21 and you now have an idea of what this Commission is looking  
22 to accomplish, and I am sure that they will take that into  
23 consideration when they do the design.

24 **DEPUTY DIRECTOR SARB:** Okay, and staff would  
25 change our recommendation, and incorporate that change.

1           **CHAIR NEELY:** All right, thank you, staff.  
2           Then, Commissioner Kram, you had a proposed  
3 amendment, as well.

4           [ MOTION ]

5           **COMMISSIONER KRAM:** I have an amending motion that  
6 priority be given to small boats, smaller than 25 feet in  
7 length, if there is a net loss in spots, in berths.

8           **MR. GROSS:** I believed it was that.

9           During the discussion that we had earlier, it is  
10 based on the range, so if we are going to have the language  
11 put into the LCP that talks about the range of 155 to 209,  
12 then I think that is appropriate language. If we are  
13 sticking with the 155, I don't see the reason for that  
14 language -- with all due respect.

15           **COMMISSIONER KRAM:** I am okay with that.

16           **CHAIR NEELY:** Let me ask if there is a "second" to  
17 the motion?

18           **COMMISSIONER BURKE:** I'll second the motion.

19           **CHAIR NEELY:** Okay, we have a motion by  
20 Commissioner Kram, and a "second" by Commissioner Burke, and  
21 they are recommending --

22           **COMMISSIONER KRAM:** I am okay with it.

23           **CHAIR NEELY:** -- "Yes", okay.

24           Commissioner Burke, did you have a comment?

25           **COMMISSIONER BURKE:** In keeping with the comments,

1 I would like to amend the motion --

2 COURT REPORTER: Would you get on your mike,  
3 please.

4 COMMISSIONER BURKE: In keeping with the motion, I  
5 would like to amend the motion stating the number of slips  
6 from 155 to 209.

7 COMMISSIONER KRAM: Yes, that is --

8 COMMISSIONER BURKE: That was your original  
9 thought, right?

10 COMMISSIONER KRAM: -- yes, correct.

11 COMMISSIONER BURKE: Thank you, very much.

12 COMMISSIONER KRAM: Thank you.

13 CHAIR NEELY: Maybe we should just get staff's  
14 comment on that, if there is any clarifications required?  
15 Their increase is all right?

16 DEPUTY DIRECTOR SARB: It is my understanding is  
17 that would change 4.22-6, the last sentence would change it  
18 to not exceed a range of 155 to 209, flipped, but then add  
19 priority shall be given to smaller boats -- did you indicate?

20 COMMISSIONER KRAM: It was 25 feet or less.

21 DEPUTY DIRECTOR SARB: Less than 25 feet in  
22 length.

23 CHAIR NEELY: Okay, any comments on that from  
24 Commissioners?

25 Commissioner Krueer, would turn on your mike.

1           **COMMISSIONER KRUER:** I just wanted ( voice fades,  
2 not on microphone )

3           **CHAIR NEELY:** Right.

4           **COMMISSIONER KRUER:** Personally, you don't gain  
5 anything by inserting 155 ( voice fades, not on microphone ).

6           **CHAIR NEELY:** Right, yes.

7           **COMMISSIONER KRUER:** So, I think we are moving in  
8 the wrong direction here.

9           **CHAIR NEELY:** Okay.

10           Commissioner Mirkarimi.

11           **COMMISSIONER MIRKARIMI:** My thoughts, exactly. I  
12 think if we can reprioritize at the 155 number then that  
13 speaks to me, but not increasing to the 209.

14           **CHAIR NEELY:** Okay.

15           Commissioner Clark.

16           **COMMISSIONER CLARK:** Same comment.

17           **CHAIR NEELY:** All right --

18           **COMMISSIONER WAN:** The same comment that  
19 Commissioner Kruer and Mirkarimi have, if we leave this at  
20 155 and you put the preference in, then that is fine by me.

21           **COMMISSIONER KRAM:** With permission from my  
22 "second" I will amend my amending motion to leave it at  
23 155.

24           **CHAIR NEELY:** All right, okay, so the amending  
25 motion now is that priority would be given to smaller that

1 25 feet in length, but the number would be 155, and not  
2 changed to 209, is that correct? okay.

3 So, that is the amending motion, any clarifica-  
4 tions from staff?

5 **DEPUTY DIRECTOR SARB:** On the issue of storage for  
6 hand launched vessels, I am not sure that any changes were  
7 suggested.

8 I wanted to draw your attention to the language in  
9 631-6, and see if maybe it is adequate. It is maintain,  
10 enhance, and where feasible expand places to hand launch  
11 small non-motorized watercraft, and to provide necessary  
12 parking, as well as opportunities to rent and store such  
13 watercraft.

14 That is one policy, and there is also another  
15 policy --

16 **COMMISSIONER WAN:** What was that number, again?

17 **DEPUTY DIRECTOR SARB:** It is 631-6.

18 And, then there is another Policy 421-2 --

19 **COMMISSIONER WAN:** Can I just speak to one policy  
20 at a time?

21 **DEPUTY DIRECTOR SARB:** Certainly.

22 **COMMISSIONER WAN:** Okay, the thing that needs to go  
23 into that is that those -- and you listed a whole range of  
24 things that should happen. It needs to be convenient to  
25 where they are launched, for the storage and those kinds of

1 things have to be convenient.

2 What you don't want, particularly, for hand use  
3 vehicles is that they be stored at a great distance, because  
4 that is very difficult to use.

5 CHAIR NEELY: We have a motion and a second on the  
6 floor, and we are getting clarification on that. You are  
7 saying there are other policies that already exist that may  
8 cover what is being suggested in the amendment? because we  
9 haven't voted on that amending motion yet.

10 COMMISSIONER WAN: No.

11 DEPUTY DIRECTOR SARB: On the amending motion for

12 --

13 CHAIR NEELY: Giving priority to boats.

14 DEPUTY DIRECTOR SARB: I am sorry, okay, why don't  
15 you take care of that, first.

16 CHAIR NEELY: Okay.

17 DEPUTY DIRECTOR SARB: Then we can take the other  
18 one.

19 CHAIR NEELY: Okay, and everyone is clear on that  
20 amending motion?

21 [ No Response ]

22 All right, is there any objection to a unanimous  
23 roll call vote on that?

24 [ No Response ]

25 Okay, seeing none, that amendment has passed.

1           Now, staff, you have a couple of other policies  
2 you want some clarification on?

3           **DEPUTY DIRECTOR SARB:** Just to clarify what should  
4 be incorporated regarding hand launched vessels.

5           **COMMISSIONER KRUER:** Yes.

6           **COMMISSIONER WAN:** What is the policy number?

7           **DEPUTY DIRECTOR SARB:** It is 631-6, is on page 79  
8 of the --

9           **COMMISSIONER WAN:** And, that was where I clarified  
10 what was needed to go in, in addition to maintain, enhance  
11 and where feasible expand places to hand launch small, and  
12 provide necessary parking, as well as opportunities to rent  
13 and store such water craft.

14           I want to make sure that the opportunities to  
15 store, rent and store such watercraft are located  
16 conveniently to the launch point.

17           **DEPUTY DIRECTOR SARB:** And, we could incorporate  
18 that change in the language.

19           **COMMISSIONER WAN:** And, Mr. Gross is trying to say  
20 something, so go ahead.

21           **MR. GROSS:** Yes, just a point of clarification,  
22 that is not going to preclude our storage opportunities that  
23 we have now and today, which may not be convenient.

24           And, the only point I want to make is that the  
25 areas that are convenient for launching, for example, Baby

Exhibit #1  
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1 Beach, I don't want to inundate the area with dry boat  
2 storage all around, because then it will take away from that  
3 amenity.

4 So, I understand what you are saying, and I just  
5 wanted to make sure there was enough flexibility in there  
6 that we have an appropriate amount, quote, by -- and then --

7 **COMMISSIONER WAN:** Good point, just add where  
8 feasible, and then that takes care of that.

9 **MR. GROSS:** Okay.

10 **CHAIR NEELY:** Thanks for the clarification.

11 All right, staff, did you have anything else?

12 **DEPUTY DIRECTOR SARB:** I do not.

13 **CHAIR NEELY:** Okay, anything else from the  
14 Commissioners?

15 [ No Response ]

16 We have taken action on all of the amending  
17 motions, so we are back to the main motion, now.

18 Is there any objection to a unanimous "Yes" roll  
19 call vote on the main motion?

20 [ No Response ]

21 Seeing none, the Commission hereby certifies the  
22 Land Use Plan Amendment No. 1-08 to the City of Dana Point.

23 **COMMISSIONER CLARK:** Madam Chair.

24 **CHAIR NEELY:** Commissioner Clark.

25 **COMMISSIONER CLARK:** Yes, I just got a call from

1 the producers of the Jay Leno show, and they are, based upon  
2 Dr. Burke's performance, they would like him on next week, on  
3 Leno at 10:00.

4 **CHAIR NEELY:** Okay, thank you.

5 \*

6 \*

7 [ Whereupon the hearing concluded at 7:30 p.m. ]

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\*

**R E P O R T E R ' S   C E R T I F I C A T E**

STATE OF CALIFORNIA            )  
  )    SS.  
COUNTY OF MADERA            )

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 75 pages represent a full, true, and correct transcript of the proceedings before the California Coastal Commission for their hearing of October 8, 2009.

Dated: March 6, 2010

**PRISCILLA PIKE**  
PRISCILLA PIKE

Exhibit #1  
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**DANA POINT HARBOR REVITALIZATION PLAN**  
(Full Text of the Suggested Modifications Can Be Found in Exhibit #2 of the Executive Director's Concurrence Staff Report Item No. W18a for the June 2010 Commission Hearing)

***CHAPTER 4 (COASTAL DEPENDENT / RELATED DEVELOPMENT)***

**4.2 Vessel Launching, Berthing and Storage**

**4.2.1 Vessel Launching -- Policies**

4.2.1-2 Protect, and where feasible, expand and enhance low-cost public boating facilities, such as providing a dedicated hand launch area at Baby Beach during peak usage periods; make publicly accessible areas of the docks available for hand launching; and providing adequate locations for vendors renting kayaks, paddleboards or other similar small vessels. **Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.** (Page I-4.4)

**4.2.2 Berthing and Storage -- Policies**

4.2.2-6 Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips harborwide. However, if conformance with current engineering and Americans with Disabilities Act (ADA) design requirements, and/or the provision of larger slips to meet demands, requires a reduction in the quantity of slips in existing berthing areas, those slips should be replaced, if feasible, in new berthing areas elsewhere in the harbor (e.g. within a portion of the 'safe harbor' area near the east breakwater). **Priority shall be given to provision of slips that accommodate boats less than 25 feet in length.** The average slip length shall not exceed 32 feet. If new berthing areas are not available or are limited in size, the net loss of slips harborwide shall be minimized and shall not exceed 155 slips. (Page I-4.4 and I-4.5)

**4.4 Marine Commercial (MC) and Marine Services Commercial (MSC)**

#### **4.4.1 Marine Commercial (MC) and Marine Services Commercial (MSC) – Policies**

4.4.1-3 To provide enhancements to boater facilities and services in the Marine Services Commercial area (Planning Area 1) one (1) dry stack boat storage facility building may be constructed with a capacity to store up to 400 boats generally ranging in size from 20 to 40 feet. The existing functionality and mode of use of surface boat storage by boaters should be provided within any dry stack boat storage facility to the maximum extent possible. Other services may include ancillary marine-related administrative, professional and business offices, marine retail store, a boater lounge area, a hoist, boat maintenance area, and potentially other boat maintenance and support facilities. The existing public launch ramp and associated vehicle and trailer parking facilities shall be enhanced and maintained. **There shall be no net loss of the existing 334 boat trailer parking spaces.** The existing vehicle with trailer parking spaces shall be reconfigured such that spaces are maximized and meet the minimum California Department of Boating and Waterways guidelines of 10 x 40 feet to the greatest extent feasible while taking into consideration the demand for larger and smaller spaces. An adequate amount of larger and smaller vehicle with trailer parking spaces shall also be provided for the type of tow vehicles and vessels that use the launch ramp facility, as determined through the coastal development permit process. (Page I-4.7 and I-4.8)

## ***CHAPTER 6 (PUBLIC ACCESS AND RECREATION)***

### **6.3 Recreation (R)**

#### **6.3.1 Recreational Opportunities**

6.3.1-6 Maintain, enhance, and where feasible, expand places to hand launch small non-motorized watercraft and provide necessary parking; as well as opportunities to rent and store such watercraft. **Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.** (Page I-6.19)

## ***CHAPTER 7 (COASTAL RESOURCE PROTECTION)***

### **7.1 Biological Resources**

#### **7.1.2 Land Resources**

#### **Nesting and Foraging Habitat -- Policies**

- 7.1.2-2 **While evaluations of the trees located throughout Dana Point Harbor do not rise to the level of ESHA, they do provide important habitat which should be protected. The purpose of these tree trimming policies is to ensure the long-term protection of bird breeding, nesting and roosting habitat for bird species listed pursuant to the Federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) as well as owls and raptors which have an especially valuable role in the overall coastal ecosystem.**

Ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, and nesting habitat of bird species listed pursuant to the federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) **as well as owls or raptors**. The trimming and/or removal of any trees that have been used for breeding and nesting by the above identified species within the past five (5) years, as determined by a qualified biologist or ornithologist shall be undertaken in compliance with all applicable codes and regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act, and shall be conducted under the parameters described in the Dana Point Harbor Tree Maintenance Procedures as approved by the Coastal Commission as a part of the Implementation Plan. (Page I-7.8)

- 7.1.2-3 OC Dana Point Harbor shall prepare Tree Maintenance Procedures for the trimming and/or removal of trees consistent with Policy 7.1.2-2 above. The procedures shall include, but not be limited to, the following provisions:

- Tree trimming, or tree removal when necessary, shall be conducted only during the non-breeding and non-nesting season (October through December) of the identified bird species unless the County of Orange in consultation with a qualified arborist and with review and comment from the Audubon Society determines that a tree causes danger to public health and safety. A health and safety danger shall be considered to exist if a qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The County shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season.

Suggested Modifications  
Revised at the October 8, 2009 Commission Hearing

- Trees or branches with a nest of a state or federal listed species, a California bird species of special concern, or a wading bird (heron or egret) **as well as owls or raptors** that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.
- The removal of any tree shall require mitigation at a 1:1 ratio. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree location, tree type, tree size (no less than 36" box size), planting specifications, and a five-year monitoring program with specific performance standards. (Page I-7.8 and I-7.9)

7.1.2-4 If an active nest of any bird species listed pursuant to the federal or California Endangered Species Act, California bird species of special concern, or a wading bird (herons or egrets) **as well as owls or raptors** is found, construction activities within 300 ft. (500 ft. from any identified raptor nest) shall not exceed noise levels of 65 dB peak until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. Surveys for the above bird species during their breeding season shall be conducted by a qualified biologist prior to commencement of construction. (Page I-7.9)

## **7.2 Marine Resources**

### **7.2.1 Dana Point Harbor Marine Habitat -- Policies**

7.2.1-3 Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such construction that alters shoreline processes shall **only** be permitted when required to serve coastal-dependent uses or to protect existing structures or adverse impacts on local shoreline sand supply and minimize adverse impacts on public use Baby Beach. (Coastal Act Section 30210-12, 30235). (Page I-7.11)

## **7.3 Water Quality**

### **7.3.1 Water Quality Landside Area -- Policies**

7.3.1-16 The use of efficient irrigation practices and native or non-invasive and drought-tolerant plants to minimize the need for fertilizer, pesticides, herbicides and excessive irrigation practices shall be required for all

areas. **The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) is prohibited.** (Page I-7.18)

## ***CHAPTER 8 (DEVELOPMENT)***

### **8.4 Scenic and Visual Resources**

#### **8.4.1 Scenic and Visual Resource -- Policies**

8.4.1-9 All exterior lighting will be designed and located to avoid intrusive effects on the adjacent uses atop the bluffs and Doheny State Beach. New light fixtures will be designed to direct light on-site, away from other areas and where feasible (not interfering with public safety), minimize impacts to nesting birds or other sensitive biological resource areas **within the boundaries of the LCP.** (Page I-8.12)

### **8.5 Coastal Views**

#### **8.5.1 Bulk and Height Limitation**

8.5.1-3 All new development in the Harbor shall not exceed a maximum building height of thirty-five (35) feet; exceptions to the 35 foot height limit include the following:

- Dry Stack Boat Storage building in the Marine Services Commercial area (Planning Area 1) shall have a maximum building height of sixty-five (65) feet
- Commercial Core area (Planning Area 2) buildings fronting on the Festival Plaza or structures fronting the East Marina Boat Basin (Planning Area 10) shall be a maximum of sixty (60) feet high;
- Visitor-Serving Commercial (Planning Area 3) building(s) shall have a maximum height of fifty (50) feet;
- Elevators, appropriately screened mechanical units and chimneys that do not exceed the ten percent (10%) of the total roof area for all new and existing/remodeled structures, should conform to the applicable height limit, but may exceed that height limit by no more than five (5) additional feet.

These heights are only allowed to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced. **Buildings, excluding the dry stack storage**

building, need to be consistent with the character of the area. (Page I-8.15 and I-8.16)

## **8.6 Hazards and Protective Devices**

### **8.6.1 Hazards and Protective Devices -- General Policies**

8.6.1-7 Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such protective devices or construction that alters shoreline processes shall **only** be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas, unless a waiver of future shoreline protection was required by a previous coastal development permit. "Existing structures" for purposes of this policy shall consist only of a principle structure, e.g. a commercial building existing at the time of certification of Local Coastal Program Amendment No. 1-08, and shall not include accessory or ancillary structures such as decks, patios, stairs, landscaping etc. (Coastal Act Section 30210-12, 30235). (Page I-8.21)

## Dana Point Land Use Plan

Hearing Date: October 8, 2009

LUP Reissued: January 29, 2010

Comment: The interested members of the public were not permitted to view or discuss the final wording of the three amendments to the LUP made by the Commissioners during the hearing. The City tells us that the County, City and Commission Staff worked collaboratively to update the document.

### Facts:

- 1) Building Heights. During the October 8<sup>th</sup> hearing considerable discussion ensued on the issue of building heights. It is clear that the maker, seconder and voting Commissioners intended to see the heights of the buildings lowered. Otherwise, the motion served no purpose.
- 2) The building heights before the Amendment were:
  - a. Boat Barn: 65'
  - b. Commercial Core: 60'
  - c. Hotel: 50'
  - d. Rest of Harbor: 35'
- 3) After the Amendment:
  - a. Boat Barn: 65'
  - b. Commercial Core: 60'
  - c. Hotel: 50'
  - d. Rest of Harbor: 35'
- 4) The City of Dana Point has the following building height restrictions:
  - a. All areas except Town Center: 33' (some confusion, may be 35')
  - b. Town Center (not yet under construction): 40'

**COASTAL COMMISSION**

EXHIBIT # 3  
PAGE 1 OF 1

### Expectations:

- 1) Motions made during a meeting cannot always be fully wordsmithed.
- 2) The document could not be fully corrected for ambiguity and inconsistencies during the hearing.
- 3) The staff and applicant (City and County) worked for the last 4 months to wordsmith the changes and eliminate the ambiguities and inconsistencies to try to achieve the Commissioners' expected result.

### Errors:

- 1) The document states that buildings must be "consistent with the character of the area" but makes no attempt to define community character while providing policies that allow building heights to grow by almost 100%, with no change despite the adopted motion.
- 2) How can the public or new members of the Commission interpret the intent of the then sitting Commissioners when a motion to make a change results in no substantive change?