

CALIFORNIA COASTAL COMMISSION

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Th22a

October 5, 2009

ADDENDUM

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th22a**, COASTAL COMMISSION LOCAL COASTAL PROGRAM AMENDMENT APPLICATION **DPT-MAJ-1-08-(City of Dana Point)** FOR THE COMMISSION MEETING OF **October 8, 2009**.

Commission staff recommends modifications and additions to the Suggested Modifications (Section II)(Exhibit 17) and Findings (Section III) of the staff report for clarification purposes. Language to be added is shown in underline and language to be deleted is in ~~strikeout~~, as shown below

A. Changes to Suggested Modifications (Exhibit 17)**1. In Exhibit 17, top of page 15 (i.e. Page I-1.6) Chapter 1 (Introduction), modify narrative for Planning Area 2 as follows:**

...Planning Area 2 currently has a total capacity of accommodating up to 900 cars in the various parking areas, including ~~dedicated~~ designated boater parking and up to 130 vehicles with trailers...

Reason for this change: The term 'dedicated' suggests that a certain area of land is legally set aside (e.g. through a deed restriction or land dedication) for one exclusive use. Commission staff did not intend for such 'dedication' to occur with regard to parking areas. The term 'designated' achieves the goal of requiring that parking areas or spaces be identified for various uses without requiring land to be legally dedicated.

2. In Exhibit 17, in the third paragraph on page 20 (i.e. Page I-1.11), Chapter 1 (Introduction), Section 1.1 Description of Dana Point Harbor Revitalization Plan, modify narrative as follows:

...Outside the Commercial Core area, the Dana Point Harbor Revitalization Plan provides for the future improvement of many of the existing Harbor facilities as funding sources are identified and jurisdictional approvals are obtained. Major components to enhance other Visitor Serving and Marine Commercial amenities are the replacement of the outdated Marina Inn complex with an upgraded hotel; the future renovation and/or expansion of the boater facilities on the Island, including expansion of the Dana Point and Dana West Yacht Clubs, restaurant renovations and modifications to the Harbor Patrol Offices to provide additional meeting rooms or staff office space; expansion of the OC Sailing and Events Center; and an upgraded boat shipyard. Other work anticipated to be performed includes the reconfiguration and/or reconstruction of the docks and needed repairs to portions of the seawall throughout the Marinas. Although specific

ideas haven't been developed at this time, some harbor users have identified a need to upgrade and expand facilities at Baby Beach to meet the growing needs of hand launched vessels and to expand the level of access for non-boating day use visitors. Policies in this plan encourage maintenance and improvement of such uses in the harbor.

Reason for this addition: To acknowledge that the Baby Beach area may need upgrades in the future and clarify that the LCP encourages and allows for such upgrades.

3. In Exhibit 17, third sentence of the last paragraph on page 20 (i.e. Page I-1.11), Chapter 1 (Introduction), Section 1.1 Description of Dana Point Harbor Revitalization Plan, modify narrative as follows:

...The long-term improvements (referred to as Phase II) are anticipated to include revitalization of the Marinas, renovations to existing structures, street and infrastructure improvements, the reconfiguration of the area presently used for non-shipyard related activities to provide space for mast-up boat storage, as well as the construction of a potential lighthouse facility near the end of Puerto Place....

Reason for change: The reference to 'mast-up' boat storage is too limiting as it does not recognize all the types of boats that must use surface boat storage because they cannot utilize a dry stack storage option (e.g. oversize boats). The construction of a lighthouse at the location identified would have adverse impacts on sensitive bird species located in this area of the harbor. Thus, the County no longer intends to pursue construction of a lighthouse in the location identified.

4. In Exhibit 17, page 28 (i.e. Page I-2.4), Chapter 2 (Land Use Plan) modify uses in the Marine Commercial (MC) designation as follows:

- ...
- Restaurants, and other food and beverage sales;
- Travel and commercial recreation services and uses;
- Public and commercial Recreation facilities;
- Law enforcement and Harbor Patrol facilities;
- Boater Service facilities, including restrooms, laundry and storage;
- ...

Reason for change: To clarify that both public and commercial recreational facilities are allowed uses.

5. In Exhibit 17, page 29 (i.e. Page I-2.5), Chapter 2 (Land Use Plan), modify uses in the Marine Service Commercial (MSC) designation as follows:

- ...
- Marine retail sales;
- Boat and personal water craft sales and rentals;
- Boater Service facilities, including restrooms, laundry and storage;
- Commercial and recreational fishing;
- Sport fishing and/or charter boat concessions;
- Information kiosks;
- Take-out or walk-up restaurant, vending machine food and beverage centers;

- Travel and commercial recreation services and uses;
- Seasonal water taxi service facilities;
- Parking areas;
- Marine-related administrative, professional and business offices;
- Public works structures necessary for the permitted development;
- Communication ~~transmission~~ facilities; and
- Public Restrooms....

Reason for change: Water craft sales already occur in the MSC area. This change allows for the continuance of that existing use. The change regarding communication facilities is simply to make this language consistent with language used elsewhere in the LCP.

6. In Exhibit 17, page 32 (i.e. Page I-2.8), Chapter 2 (Land Use Plan) modify narrative in the third paragraph for the Day Use Commercial (DUC) designation as follows:

...The new Day Use Commercial area would replace and/or rehabilitate approximately 26,600 sq. ft. of existing retail uses and 51,300 sq. ft. of existing restaurant uses. The Revitalization Plan would allow for the relocation of the yacht brokerages within existing Boater Service Buildings 1 and 2. The Plan would also allow for a marine retail store to be located in the Commercial Core area of the Harbor (in the Day Use Commercial area only and not in the Marine Service Commercial area). Commercial and restaurant uses would be integrated into a two level podium structure, accommodating parking spaces and waterfront retail uses on the bottom level and ~~additional~~ restaurant facilities and additional parking on the second level.

~~Adjacent to the Commercial Core, within the Day-Use Commercial land use designation, a new two-level parking deck would be allowed. The recently renovated Dana Point Harbor Entry Monument Sign and landscaping improvements at the intersection of Dana Point Harbor Drive and Street of the Golden Lantern will remain in place...~~

Reason for change: Clarification and removal of unnecessary details.

7. In Exhibit 17, page 33 (i.e. Page I-2.9), Chapter 2 (Land Use Plan) add the following uses to the Recreation (R) designation as follows:

- Facilities for the hand-launching of small non-motorized watercraft;

Reason for change: To recognize and allow for an existing use.

8. In Exhibit 17, page 36 (i.e. Page I-2.12), Chapter 2 (Land Use Plan) modify 4th sentence of paragraph following the list of allowable uses in the Educational/Institutional (E) designation as follows:

... Recreational uses within the vicinity of the Ocean Institute include the Old Cove Marine and Native Plant Preserves. To facilitate access to the Ocean Institute, a seasonal water taxi stop may be located adjacent to the Ocean Institute's Tall Ship Harbor facilities. The Ocean Institute was recently completely renovated....

Reason for change: Clarification

9. In Exhibit 17, page 46 (i.e. Page I-4.2), Chapter 4 (Coastal Dependent/Related Development) in Section 4.1.1 Coastal Dependent/Related Development – Policies, modify policy 4.1.1-1 as follows:

- 4.1.1-1 Coastal-dependent development, as defined in Chapter 9.75 of the City of Dana Point Zoning Code, shall have priority over other developments on or near the shoreline. Except as provided for in Conservation and Open Space Element Policy 3.6, coastal-dependent developments shall not be sited in a wetland. Coastal-related developments should be accommodated within the closest feasible proximity to the coastal-dependent uses they support. (Coastal Act Section 30255)

Reason for change: Clarification

10. In Exhibit 17, page 49 (i.e. Page I-4.5) Chapter 4 (Coastal Dependent/Related Development) in Section 4.2.2 Berthing and Storage - Policies, modify policy as follows:

- 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). Under no circumstances shall the net loss of slips exceed 155 slips and the 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.

Reason for change: To clarify that a net loss of slips should only occur when new berthing areas are not available or are very limited in size. In addition, even though there is an allowance for a loss of up to 155 slips, any losses should be minimized to the maximum extent feasible.

11. In Exhibit 17, page 49-50 (i.e. Page I-4.5 to I-4.6) in Chapter 4 (Coastal Dependent/Related Development) Section 4.2.2 Berthing and Storage - Policies, modify policy as follows:

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 ~~environmental review process~~ (minimum 292 spaces);

- ~~Retain the existing number of dry boat storage spaces until a replacement dry stack storage facility is constructed and open for use.~~ 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 mast-up surface boat storage spaces, that can accommodate vessels that can not 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 any loss of slips; and
- Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

Reasons for changes: First bullet – To clarify the size of the existing boat launch ramp parking area, and to require that a redesigned parking area include spaces that are larger and smaller than 10'x40' in addition to maximizing the number of 10'x40' spaces. Second bullet – The first sentence is being deleted and replaced by a new sentence to make clear the need to protect a certain amount of dry boat storage in Planning Area 1. It is important to include some protection of this existing use in this policy because the provision of a dry stack storage facility has been changed from mandatory to permissive in Policy 4.4.1-3. Space for 493 boats could be provided in surface storage or a mixture of surface storage and dry stack storage. Note that if no dry stack is provided, or a facility with less than 400 boats is provided in dry stack, then additional surface area will be needed to provide space to store this quantity of boats. The phrase “mast-up” is replaced with more descriptive language.

Fourth bullet – Adding “side tie” clarifies that parking spaces need to account for side tie boat slips as well.

12. In Exhibit 17, page 51 (i.e. Page I-4.7) Chapter 4 (Coastal Dependent/Related Development) Section 4.4 Marine Commercial (MC) and Marine Services Commercial (MSC), modify fifth paragraph of narrative, as follows:

...The provision of surface boat storage and parking for the boat launch (i.e. vehicle with boat trailer) is a priority in the Marine Services Commercial area. Approximately 93 surface boat storage spaces will be provided. Additional dry boat storage will be provided in surface storage and/or in a dry stack boat storage facility. The boat launch facility will be redesigned and expanded such that spaces are maximized and so that all vehicle with trailer parking spaces will meet the minimum Department of Boating and Waterways guidelines of 10' X 40' to the greatest extent feasible while taking into consideration the demand for larger and smaller spaces. ~~However, in order to~~

~~accommodate heavy duty tow vehicles and larger ocean-going vessels, larger vehicle with trailer parking spaces are also needed. The number of larger spaces needed will be determined through the environmental review process. An adequate quantity of larger and smaller vehicle with trailer spaces shall be provided for the type of tow vehicles and vessels that use the launch ramp facility, as determined through the coastal development permit process.~~

Reasons for change: Same as previous.

13. In Exhibit 17, page 52 (i.e. Page I-4.8) Chapter 4 (Coastal Dependent/Related Development) Section 4.4.1 Marine Commercial (MC) and Marine Services Commercial (MSC) – Policies, modify policy, as follows:

4.4.1-3 To provide enhancements to boater facilities and services in the Marine Services Commercial area (Planning Area 1) ~~construct 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 ~~space facilities~~. The existing public launch ramp and associated vehicle and trailer parking facilities shall be enhanced and maintained. The existing vehicle with trailer parking spaces shall be reconfigured such that all 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 ~~environmental review process for the coastal development permit process.~~

Reason for change: Clarifying that the construction of a dry stack building is permissive rather than mandatory. The need for such a facility has yet to be determined. In addition, if such a facility is built, the existing functionality of the surface boat storage it will replace will need to be replicated in the dry stack storage to the maximum extent possible. For instance, surface boat storage users currently enjoy access to their boat without appointment. Surface boat storage users have expressed concern about loss of that flexibility in a dry stack storage facility. The County has provided assurances that it can replicate and even improve upon boat storage users current modes of use of the surface boat storage in a dry stack facility.

14. In Exhibit 17, page 71 (i.e. Page I-6.13) Chapter 6 (Public Access and Recreation) Section 6.2.5 Parking, modify policy, as follows:

6.2.5-6 ~~Dedicated~~ Designated boater parking areas shall be located as close as possible to the land/dock connection point of the docks they serve. Typically, the boater parking spaces should be within 300-feet of the land/dock connection point of the docks they serve, but ~~in unusual cases~~ where adherence to this standard isn't infeasible, the parking spaces shall be within a maximum of 600-feet of the land/dock connection point of the docks they serve. Mitigation measures should be provided to assist boaters with transport of passengers, equipment and provisions from parked vehicles to boats in cases where the distance between parking spaces and the docks exceeds 300-feet and/or where there are other factors present which make such transport difficult.

15. In Exhibit 17, page 72 (i.e. Page I-6.14) Chapter 6 (Public Access and Recreation) Section 6.2.5 Parking, modify policies, as follows:

6.2.5-8 The parking ratios will be contained in the off-street parking standards section of the Implementation Plan once certified by the California Coastal Commission. Any Changes to these standards shall ~~requirements require~~ a Local Coastal Program Amendment.

6.2.5-11 ~~Dedicated~~ Designated boater drop-off areas and parking shall be provided in the Commercial Core.

6.2.5-13 Prior to the approval of any Coastal Development Permit or Grading Permit for Revitalization Plan improvements, OC Dana Point Harbor shall prepare a construction-phase Parking Management Plan (PMP) that ensures public access will be retained to the extent it can be safely provided and to reduce construction congestion / conflicts.

6.2.5-14 OC Dana Point Harbor shall prepare a Traffic Management Plan (TMP) to include a provision for use of off-site locations for parking ~~for~~ during peak Harbor use periods as necessary.

16. In Exhibit 17, page 78 (i.e. Page I-6.20) Chapter 6 (Public Access and Recreation) Section 6.3.1 Recreational Opportunities, modify second sentence of first full paragraph of narrative, as follows:

...Planning Area 4 (Marine Commercial) – Planning Area 4 includes the Dana West Yacht Club and the Dana Point Yacht Club. The Dana West Yacht Club is a full-service club that provides junior sailing programs, racing programs and billfish tournaments. The Dana Point Yacht Club also provides junior sailing programs, racing programs and permanent and visitor slips available on a reservation or first-come-first-serve basis. Along the southern boundary of the Island is a ~~one-half-mile~~ 4.25 acre picnic park area that includes picnic areas with benches, restroom facilities and barbecues on wide grassy areas (although located in Planning Area 4, this area is designated Recreation

(R). Planning Area 4 also includes the Aventura Sailing Association, which provides boat rentals, sailing instruction, cruises, whale-watching charters and racing programs...

17. In Exhibit 17, page 79 (i.e. Page I-6.21) Chapter 6 (Public Access and Recreation) Chapter 6, Section 6.3.1 Recreational Opportunities, modify third paragraph of narrative as follows:

Planning Areas 9 and 10 (West and East Marina's) – Planning Area 9 (West Marina) and PA 10 (East Marina) consist of 2,409 boat slips. Additionally, Planning Area 9 includes 42 visitor slips, 15 commercial fishing slips, 9 Harbor Patrol slips, 13 OC Sailing and Events Center slips and 11 slips for the Dana Point Yacht Club.

18. In Exhibit 17, page 89 (i.e. Page I-7.7) Chapter 7 (Coastal Resource Protection) Section 7.1.2 Land Resources, modify second full paragraph of narrative as follows:

Additionally, requirements for the preparation and approval of erosion control plans prior to the commencement of any grading operations that specifies practices to prevent off-site siltation, construct or upgrade drainage facilities and minimize slope erosion will be implemented in conformance with Part II – Chapter 3, *General Provision and Regulations and Special Provisions.*

19. In Exhibit 17, page 103 (i.e. I-7.21) modify subsection (g) of policy 7.3.2-3 of Chapter 7 (Coastal Resource Protection), Section 7.3.2 Water Quality Waterside Area - Policies, as follows:

- g) If federal or state regulatory agencies, through new or better scientific information, determine that less environmentally less damaging materials or methods are available for new piles or piling replacement, the least environmentally damaging materials and/or methods should be required for such projects, as feasible.

B. Changes to Staff Report/Findings

1. Global Change:

Wherever the figure “50,000” square feet appears with regard to total added restaurant space in the LCP area, change to “35,000” square feet. This change is due to a prior math error. Thus, total existing restaurant space in the LCP area is 61,300 sq.ft. and would expand to an allowable 96,150 sq. ft. with this LCP amendment.

2. On page 38, middle of page after second paragraph, modify the findings as follows:

Alternative 3.5O 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 it would still allow a significant net loss of slips (209) and 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 number and size 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 ~~agrees with the analysis of~~ 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, ~~and full operation of the boat storage facility (Policy 4.2.2-10).~~ At that time the Commission will also 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 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 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). ~~Under no circumstances shall the net loss of slips exceed 155 slips and the~~ 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 ~~L~~arger 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 environmental review process (minimum 292 spaces);

- Retain the existing number of dry boat storage spaces until a replacement dry stack storage facility is constructed and open for use. 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 mast up surface boat storage spaces, that can accommodate vessels that can not 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 any loss of slips; and
- Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

3. On page 40, add the following before the first full paragraph and revise as follows:

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 existing surface dry boat storage spaces since a significant loss of this capacity these spaces 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 storage spaces, but that number does not constitute a significant loss. Currently, the area considered as Planning Area 1 contains a large number of dry boat storage spaces as well as vehicle with trailer parking spaces for the adjacent public launch ramp. A significant loss of these dry boat storage spaces, as well as the Furthermore, the policy requires the protection and expansion of the 5.7 acre parking area for vehicles with trailers parking spaces which support use of the boat launch ramp would discourage recreational boating opportunities serving the general public which is also a high priority use under the Coastal Act.

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 Commission finds that while there may be a potential net loss of up to 155 slips if no net loss of slips is found to be infeasible, and a loss of up to approximately 300 slips under 30 feet in length, this loss could be found acceptable with provision of a planned boat storage building capable of storing 400 boats and additional surface boat storage area capable of storing at least 93 mast-up boats based on the~~

The information provided by the County/City, documents that 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 surface 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 number (minimum 292)~~ and 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 demand⁵. 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

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

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.

C. Additions and changes to Exhibits (Attachment #1)

-Copy of Exhibit 12 (Nossaman letter) previously excluded from printed and electronic editions sent to Commissioners

D. Letters and Emails Received (Attachment #2)

E. OC Dana Point Harbor Briefing Book to Commissioners (Attachment #3)

F. Ex-Parte Communication Disclosures (Attachment #4)

G. Chart showing historical vacancy rates in the harbor (provided to staff by the County)(Attachment #5)

H. Memorandum from Dr. Jonna Engel dated June 8, 2009 regarding Dana Point Harbor Heronry (Attachment #6)



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Refer To File #: 290529-0001

VIA FEDERAL EXPRESS

May 8, 2009

Chairman Neely and Commissioners
California Coastal Commission
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COASTAL COMMISSION

EXHIBIT # 12
PAGE 1 OF 8

**Re: Dana Point Shipyard's Requested Revision of Local Coastal Program
Amendment 06-03 (Dana Point Harbor Revitalization Plan)**

Dear Chairman Neely and Commissioners:

We represent Anchor Marine, the current operator and long-term lessee of the Dana Point Shipyard (also "Shipyard") with respect to the overall County of Orange Dana Point Harbor Revitalization Plan ("Plan") and specifically the City of Dana Point ("City") Local Coastal Program Amendment 06-03 ("LCPA 06-03").

While we do not oppose the Plan or LCPA 06-03, our previous submittals and communications with the City, the County and Commission staff should make it clear that the reduction of the existing 2.6 acre Shipyard parcel to the 1.6 acres proposed in the Plan will: (1) eliminate the ability of the Harbor to supply the full range of marine services within the expanded Harbor; (2) create significant environmental impacts on water quality in the Harbor not yet analyzed in any environmental document addressing waterside activities;¹ and (3) violate important and controlling provisions of the Coastal Act (Pub. Res. Code §§ 30234, 30224 and 30225) by failing to prioritize, protect, and, as has been demonstrated to be feasible, upgrade coastal-dependent marine services that will serve recreational boaters and protect water quality in the Dana Point Harbor.

Our specific request, based upon all available County information about the "Waterside" portion of the plan yet to be environmentally cleared and approved, and the enclosed February 24, 2009 Marina Business Associates ("MBA") Market and Operations Analysis Review with Revised Considerations and Recommendations" is this: **a 2.5 acre shipyard must be provided in the Plan and mandated by the LCPA the Commission ultimately adopts, in order to ensure the full range of marine services, including do-it-yourself marine repairs, are available to serve recreational boaters in Dana Point Harbor.**

¹ The Waterside SEIR IS/NOP was issued in November 2007 and the Draft EIR has yet to surface – see attached letter on behalf of the Shipyard to the County dated January 2, 2008.



An adequately sized shipyard is particularly critical given the County's proposed Slip Mix Alternatives #3 and #4, which call for a significant increase in the number of vessels in the 30' – 50' range.

We would point out that we have communicated this deficiency in the Plan very early in the LCP Amendment process, both formally, in the administrative record, as well as in meetings with County and Commission staff. Based on our testimony and that of several citizens at the City of Dana Point ("City") September 13, 2006 Council hearing on the LCPA, the Council included among requested amendments the following direction:

- "II. *Direct County of Orange to take into account City Council comments made during meeting to the extent feasible as the Plan goes forward and is fleshed out. Specifically, the City Council would like the County to provide direction on*
- 1) amount of land allocated to the shipyard (shipyard size adequacy) and*
 - 2) reduction of boat slips to be shared for all boat sizes."*

To date, we have received no response from the County on this requested action, nor has the City received any "direction" or explanation to the best of our information.

We enclose three key documents that we would respectfully ask the Commission review and evaluate prior to approving the County-City Plan as presented to date. These three documents update our December 1, 2006 submittal to the Commission staff, our attached letter to the County on the Supplemental EIR for Waterside SEIR-IS/NOP and information on the need for a 2.5 acre Shipyard provided in meetings with Brad Gross and County Harbor Department staff on September 4, 2008 and with Teresa Henry, Karl Schwing and Fernie Sy of your Long Beach office on January 6, 2009.

The attached documents are:

- 1) MBA's Updated February 24, 2009 Shipyard Market & Operations Analysis – Revised Recommendation;
- 2) MBA's March 26, 2009 Response to County's URS/Cash study;
- 3) Powerpoint presentation comparing the Dana Point Shipyard with the marine services provided in Newport Beach and Basin Marine Shipyard).

COASTAL COMMISSION

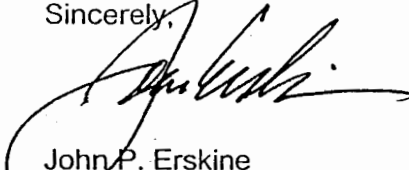
EXHIBIT # 12
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Please do not hesitate to contact us if we may address any questions; we will be contacting individual Commissioners as available and providing testimony at the June Commission hearings.

Thank you.

Sincerely,



John P. Erskine
of Nossaman LLP

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MAY 18 2009

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JPE/rst
Enclosures

cc: Peter Douglas, Director, California Coastal Commission (with enclosures)
Doug Chotkevys, Dana Point City Manager (with enclosures)
Brad Gross, Director, Dana Point Harbor Department (with enclosures)
Karl Schwing

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PAGE 3 OF 8

LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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clobell@nossaman.com

REFER TO FILE #
290529-0001

January 2, 2008

COASTAL COMMISSION

VIA U. S. MAIL AND ELECTRONIC MAIL

Brad Gross, Director
County of Orange
Dana Point Harbor Department
24650 Dana Point Harbor Drive
Dana Point, CA 92629

EXHIBIT # 12
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Re: Comments on the Notice of Preparation for the Dana Point Harbor Marina Improvement Project

Dear Mr. Gross:

We represent Anchor Marine Repair Company ("Anchor Marine") regarding its interest in the Dana Point Harbor Marina Improvement Project ("Project"). Anchor Marine is the only shipyard in the Harbor. Anchor Marine plays a vital role in maintaining the functionality and safety of the harbor, and intends to continue that role, despite the fact that previous County plans (the Dana Point Harbor Revitalization Plan) reduced Anchor Marine's existing 2.6 acre site to approximately 1.6 acres. This change in the parcel currently leased from the County will: reduce the boatyard area, reduce the on-site building, eliminate any opportunity to expand to service the larger boats planned for the harbor and drastically reduce parking. Anchor Marine supports the Harbor Department's objective to improve water quality by: providing boat repair and maintenance services on land in an environmentally controlled facility, thus avoiding pollution impacts resulting from in the water repairs and travel to other harbor shipyards.

We previously submitted comments on earlier and related projects, specifically, on September 13, 2006, we submitted comments to the City of Dana Point on the Dana Point Harbor Revitalization Plan & District Regulations.¹ Our previous comments are incorporated herein by reference and attached for your convenience. Anchor Marine continues to be concerned about the need to consider and evaluate the relationship between water side and land side issues in the Harbor in planning and environmental documents, and the continued piecemealing and segmentation of the various functions of the Harbor as the County moves

¹ Anchor Marine also submitted written comments on the Draft EIR No. 591 on November 8, 2005 and presented verbal comments at the Board of Supervisors hearing on January 31, 2006.

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LOS ANGELES SAN FRANCISCO ORANGE COUNTY SACRAMENTO WASHINGTON, D.C./VIRGINIA AUSTIN SEATTLE

forward with implementing the Harbor Revitalization Plan. The two components, water side and land side, are integrally related, and changes in one of the components have the potential to result in secondary or indirect effects on the other component. This is especially true for boating related services, for example, normal boat maintenance and for emergency assistance.

The following are our comments on the Notice of Preparation for the Dana Point Harbor Marina Improvement Project, including comments on the scope and content of the environmental information to be included in the Subsequent Environmental Impact Report ("SEIR"):

1. The Project Description states that "the total number of boat slips ... would decrease from 2,409 to 2,035, resulting in a net loss of 374 slips." The Project Description, however, also states that the project will include a number of design measures "in an effort to limit the loss of slips." It is not clear whether the project includes a change in boat slips from 2,409 to 2,035, or if there is a different number of slips based on the efforts to limit the loss of slips. The Notice of Preparation ("NOP") does not state the number of boat slips that will be analyzed for purposes of analyzing impacts of the project and comparing those impacts to a "no project" alternative. The SEIR should be clear as to the number of boat slips analyzed as the after project condition.
2. The Project Description does not describe any change in overall Harbor operations related to the modified slip mix or other aspects of the Project. The Initial Study states that the land use of the site will not be changed, and the project "is not expected to increase capacity or add any significant amount of impervious surface to the project area. Long-term operations will not be significantly different than the current uses and are not expected to increase or introduce additional water quality pollutants." (Page 3-12).

Based on the NOP and Initial Study, it appears that the County is defining the project very narrowly, and is not planning a comprehensive analysis of the reasonably foreseeable operational consequences of the project. Changes in the slip mix, market demand and other factors, as referenced by the County on pages 3 and 4 of the NOP, would have reasonable foreseeable effects on the entire Dana Point Harbor. Foreseeable direct and indirect effects on both the landside and waterside environment, including water quality, traffic, noise and air quality effects should be evaluated.

3. In accordance with CEQA Guidelines section 15125, the SEIR must include a description of the physical environmental conditions as they exist at the time the NOP is published. While the NOP/Initial Study indicates no change in operations, it is unclear whether this is based on a factual description of current conditions. For example, the *Dana Point Harbor Boat Traffic Study* ("Boat Traffic Study"), November 2007 states that power boat usage is double sailboat usage (page 39). The Project Description references changes in the boating needs of the public, and that 400 boats presently exceed the policy allowing boats to be up to 3 ft. longer than their dock length. To the extent these trends and factors are present in the existing conditions at

Brad Gross
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the harbor, the SEIR must describe them as part of the existing conditions. The environmental setting "will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant." (CEQA Guidelines § 15125, subd., (a).) *Save Our Peninsula Comm. v. County of Monterey*, (2001) 87 Cal. App. 4th 99, 125 (explaining that an EIR must adequately describe an existing land use because "the significance of a projects impacts cannot be measures unless the EIR first establish[es] the actual physical conditions on the property.") Thus, it is important that the County identify those existing conditions and operations in order to provide a thorough assessment of any potential impacts associated with the project.

4. Although the project is framed simply as a dock replacement project, the dock replacement includes reconfiguration of the docks and also includes new dry stack storage staging docks and dinghy docks, among other changes. The new dry stack storage staging docks are presumably to service the new dry stack storage planned as part of the land side improvements. This highlights the close relationship between the land side and water side facilities and the importance of evaluating any direct, indirect or secondary effects of the Project on the rest of the Dana Point Harbor.

5. While framed as a dock replacement, it is unclear to what extent future use of the docks is expected to change based on the Dana Point Harbor Revitalization Plan or other trends. To the extent that the land side and water side changes are inconsistent and adequate support facilities are not provided, the marketplace will respond in ways that may have environmental impacts. The planned reduction in shipyard acreage may result in repair demand being met through freelance work. For example, it is reasonably foreseeable that additional freelance boat repair/painting work will be conducted in the water or from the docks, in close proximity to the water or in the water. Boat maintenance work at these locations can significantly degrade water quality. Work in the water may increase the release of potentially hazardous materials such as copper-based paints from boat hulls. Other maintenance that may occur without hauling out to a shipyard could include varnishing, topside painting, sanding and waxing. These types of maintenance might also increase the release of potentially hazardous materials into the water, including varnish, wax and paint and related debris. The water quality and other impacts of such repair work must be addressed in the SEIR.

6. The SEIR cannot evaluate water quality impacts within the Marina waterways without evaluating the critical issue of where boat maintenance and repair will occur.

The SEIR should take into account the effect the reduced Dana Point Shipyard service area will have on water quality, since a reduction of "on-land" boat service and maintenance area will potentially increase "in-water" repairs and maintenance.

7. The SEIR should evaluate the potential increase in the copper contamination of the Dana Point Harbor due to continuation of or increase in the current level of underwater

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hull-cleaning (see Technical Report 483/March 2006 – “Extent and Magnitude of Copper Contamination in the Marinas of the San Diego Region.”)

8. As part of the reconfiguration of the docks, the Project also includes an increase in surface area of the floating docks and encroachments into the channels. This increase in encroachment was one of the reasons for conducting the Boat Traffic Study. While purportedly addressing existing and future boat traffic conditions, the Boat Traffic Study did not analyze such conditions in the basin between the East Basin and the easternmost basin where the dry stack storage staging docks would be located (Planning Area 11). Since the Project includes new and replacement facilities in Planning Area 11, boat traffic in Planning Area 11 should be addressed in a Boat Traffic Study and in the SEIR. Table 3-2 of the Boat Traffic Study references the Small Day-Use Vessel traffic as 44 % of the total watercraft observed, yet, the study did not evaluate conditions where such craft are launched, and did not evaluate future conditions with the new dry stack storage staging docks.

The NOP states that the Project also includes new dry stack storage staging docks. The Boat Traffic Study and the SEIR must also address existing and future conditions, including the types of boats expected to use the dry stack storage staging docks ramp and operations in the harbor based on those conditions.

If you have any questions, please feel free to call me at 949-833-7800.

Very truly yours,



Carolyn B. Lobell
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

CBL/rst
Enclosure

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LOS ANGELES SAN FRANCISCO ORANGE COUNTY SACRAMENTO WASHINGTON, D.C./VIRGINIA AUSTIN SEATTLE

TH 22a
City of Dana Point LCP Amendment 1-08
DANA POINT HARBOR REVITALIZATION PLAN

ATTACHMENTS REFERENCED IN
LETTER FROM
NOSSAMAN LLP DATED 5/8/09 ARE
ATTACHED TO THE ON-LINE VERSION OF
THE STAFF REPORT ONLY

The attached documents are:

- 1) MBA's Updated February 24, 2009
Shipyard Market & Operations Analysis –
Revised Recommendation
- 2) MBA's March 26, 2009 Response to
County's URS/Cash study
- 3) Powerpoint presentation comparing the
Dana Point Shipyard with the marine
services provided in Newport Beach and
Basin Marine Shipyard

SEE COASTAL.CA.GOV/PUBLIC
MEETINGS/OCTOBER 8, 2009/ITEM TH 22a

COASTAL COMMISSION

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Fernie Sy

From: BradHAWay@aol.com
Sent: Thursday, October 01, 2009 1:59 PM
To: Fernie Sy; bonnie.neely@co.humboldt.ca.us
Subject: Dana Point Plan

California Coastal Commission
Madam Chair Bonnie Neely
Mr. FernieSy

Good Afternoon:

As a nearly 20 year boater in Dana Point, I wish to remind the commission that nearly every California harbor has at least one full service shipyard. Many have multiple yards. For us to have none would create a major step backwards, not forward.

If without a shipyard, boats that would need to be hauled out would have to travel at least 15 miles north or south. Some might not make it that far, and the environmental impact alone from wasted fuel should be considered, as well as the financial impact.

This is NOT the way to go!

Sincerely,

Bradley S Hartstein
34132 Capistrano By The Sea
Dana Point, CA 92629

Slip A-104
Dana West Marina

Fernie Sy

From: Hank Davis [hhdavisj@cox.net]
Sent: Thursday, October 01, 2009 12:04 PM
To: Fernie Sy; bonnie.neely@co.humboldt.ca.us
Cc: 'Dana Point Shipyard'; cap10paul@aol.com; Peter Bartholomew
Subject: Dana Point Revitalization

Dear Mr Fernie and Ms Neely,

I am a current boat owner and have operated my sail boat out of Dana Point Marina for the last three years. Dana Point harbor is the best I have seen in my over 50 years of Navy and recreational sailing experience.

I have tracked the ongoing debate regarding the future of Dana Point Revitalization plan and I am very concerned by political and business pressures being brought to bear on the California Coastal Commission that are not in the best interests of the harbor.

While the harbor does require some modernization of it's facilities in the future, it appears to me that a number of businesses, investors and Orange County politicians are using this revitalization effort to serve their "conflict of interest" desires to increase commercial tax base and investor profitability rather than to meet the needs of the majority of boat owners. In particular, they are making moves to reduce or remove a very significant service provided by the Dana Point Shipyard and to reduce significantly the number of slips available to affordable recreational boats.

For those of us who sail the coast of S. California, the Dana Point shipyard is the only one available within several hours transit time should we suffer unanticipated engine or hull problems or emergencies. In addition, planned expansions of the area for boat lay up for maintenance and refit are also being pressured by the county and retail shopping associated businesses to be reduced or eliminated all together. This is not in the best interests of the boating community in Dana Point.

I solicit you to support requirements for the County to adjust their plans to serve the interests of the commercial and recreational boating community **first**. Specifically that plan should:

- Maintain or expand the shipyard services at Dana Point as vital to the commercial and recreational boating community.
- Design any commercial expansion plans to maintain or increase the available docking to the smaller sized and more affordable boats (those less than 28-30 feet in length).
- Should there be a more defined growing market for docking for larger recreational boats, define a future harbor expansion outside the current breakwater to accommodate that market with commensurate return on that investment. Note: I would doubt that such a business case could be made given the current state of the economy and the very poor record state and county governments have shown in managing their essential community services within current and projected tax and bond resources.

I appreciate your support of these requirements.

Regards

Hank Davis

hhdavisj@cox.net

714-403-7305

SV Sunset, Dana Island East D-53.

Fernie Sy

From: Granata, James [James.Granata@parsons.com]
Sent: Thursday, October 01, 2009 11:01 AM
To: Fernie Sy
Cc: BruceHeyman@dpba.org
Subject: UPCOMING HEARING ON OCTOBER 8, 2009 IN OCEANSIDE, CALIFORNIA

Dear Commissioner:

I have been a small boat owner since 1984 in Dana Point harbor. Boating is the only form of recreation my family has and we scrimp and save every way we can to be able to afford this hobby.

As you know, there are plans to drastically revamp the DP harbor by adding new commercial space and reducing boater access while reducing the number of small slips available to folks like me. While I understand that a few changes could be in order, like improving access to the launch ramp, I cannot understand the proposed crass commercialization of the harbor.

The Harbor is not a shopping mall; it is a small boat harbor which in 1969 was designed for boaters primarily and commercial interests secondarily. Now, the tables seem to be turning in favor of commercialism at our expense.

We are the little guys in this battle and want to preserve all the wonderful things this harbor has to offer such as its quaintness, small size and appearance. Commercializing this harbor along the lines of Marina Del Rey will ruin it for the boaters while offering a windfall to the commercial interests.

I ask that you please focus on us, the little guys, the boaters who pay our rent and follow the rules in preserving the harbor for the interests of the boaters. Please look out for us as no one, other than our great Boaters Association, seems to care.

Thank you,

Jim Granata
Dana Point Harbor, Slip D-30, East Basin

Fernie Sy

From: Beverly Mathias [beverlymathias@cox.net]
Sent: Wednesday, September 30, 2009 3:00 PM
To: Fernie Sy
Subject: Dana Point Harbor

I am a supporter of the Dana Point Harbor Revitalization and want the City of Dana Point's Local Coastal Program Amendment, LCPA 03-06, to be amended and approved quickly and efficiently by the California Coastal Commission in a way that restores and preserves recreational boating facilities while enhancing visitor serving amenities.

Sincerely,

Beverly Mathias

13800 Parkcenter Lane #347
Tustin, CA
92782
714-832-8846

Fernie Sy

From: JAXON9597@aol.com
Sent: Thursday, October 01, 2009 11:54 AM
To: Fernie Sy
Cc: WebMaster@danapoint-shipyard.com
Subject: Dana Point Shipyard

Hello,

I will be very brief. It is absolutely crucial that the existence, status, and future of Dana Point Shipyard not be compromised by the Dana Point Harbor revamp project. Among other considerations, the yard is essential to the safety of the South Orange County boating community.

Respectful regards,

Richard J. Gault
The yacht Mysterry
Dana Point Marina, Island slip C50

Fernie Sy

From: Amy Kramer [amyckramer@gmail.com]
Sent: Thursday, October 01, 2009 12:52 PM
To: Fernie Sy
Subject: The Dana Point Revitalization

Mr. Fernie Sy,

I am writing you today to let you know that I think this Dana Point Shipyard Revitalization, taking away Dana Point Shipyard's land is a bad idea. They have been a full service Shipyard for years. They have put their hard work, time and hearts into making the Shipyard the best it can be. Taking away an acre of their land and everything else being done is going to put a big halt to business, they will loose customers and their good name. Do you know who the Harbor Patrol calls day or night when there is an Emergency with a boat? Dana Point Shipyard. What are they going to do know if you go on with this? There is no other place to do emergency haul outs in the harbor except for Dana Point Shipyard. They are honest, caring and hard workers that want to keep growing with their business. They are concerned about their customers and giving them the best. I hope you take a second thought about what you are doing here, and how many lives this will affect.

Thank you for your time, Amy Kramer

Fernie Sy

From: Brian Klotz [klotzklan@yahoo.com]
Sent: Thursday, October 01, 2009 6:40 PM
To: Fernie Sy
Subject: [Possible Spam]
Importance: Low

AS A BOAT OWNER AND SLIP RENTER IN DANA POINT HARBOR FOR OVER 20 YEARS I
FIND IT UNFAIR TO TAKE LAND FROM THE SHIPYARD PROPERTY....
WE NEED A FULL SERVICE YARD IN DANA POINT... NO ONE WANTS TO TRAVEL TO
NEWPORT BEACH FOR BOAT YARD REPAIRS.....
PLEASE RE-CONSIDER THIS IDEA.

BRIAN KLOTZ
27056 CALLE JUANITA
DANA POINT, CA. 92629

Fernie Sy

From: toho@cox.net
Sent: Thursday, October 01, 2009 7:57 PM
To: Fernie Sy
Subject: Dana Point Shipyard & Revitalization Hearing Notice-TH 22A

Dana Point Harbor needs a full service shipyard. Please do not allow the removal, relocation or downsizing of what we currently have available.

Todd Horton
808 Futura
San Clemente, CA 92672

Fernie Sy

From: Marc Maury [marcm@maurymw.com]
Sent: Friday, October 02, 2009 11:22 AM
To: Bonnie Neely; Fernie Sy; Karl Schwing; Teresa Henry
Cc: Ted Olsen; Bruce Heyman; Dana Point Shipyard
Subject: Dana Point Harbor

Dear Coastal Zoning Commission Members,

My Name is Marc Maury and we have kept a slip in DP since 1975, I believe we are 19th or 20th oldest slip renter in the harbor. We have nothing to gain or lose regardless of what decision you make going forward however I felt I should voice my opinion.

For my money DP Harbor is the most beautiful small boat harbor on the west coast and it's certainly the most user friendly if you are a boater. We are out on the open ocean in a short period of time and the facilities are very convenient and in most cases adequate. I believe that was the intention of the people who originally designed and approved this very functional harbor.

Now I have to ask myself why are going to tear down and reconstruct this place and what are we gaining? Also I am reminded that the primary intention to have a harbor is to make a place for boaters to keep their boats and that is what attracts people here in the first place and provides an opportunity for businesses to service the general public and the county to reap the income from slip rentals and tax revenues.

The existing buildings appear to be structurally sound, parking appears to be adequate, The parking convenience to the slip renters is very good and should not be sacrificed, [for older people increasing the distance they have to walk and carry things to their boats is not desirable], bathrooms are adequate but need updating and remodeling, as do most of the buildings, Maintenance could be improved. re-paving of the parking lots needs to be done. We have fine restaurants easily accessible to visitors as well as slip renters. We have a good boat yard that has serviced our needs adequately and a fuel dock that charges the highest prices on the west coast. [with the exception of Catalina which is understandable].

There is no question everything in the harbor needs some degree of updating but wouldn't this be a more cost effective solution rather than tearing buildings down and starting from scratch? Does the gain outweigh the cost and displacement of businesses, slip renters and visitors alike?

It's difficult for me to understand why in the middle of a terrible recession this plan is even being considered. My suggestion is we minimize reconstruction and opt for re-modeling of structures, facilities and Slip re-alignment to better meet current needs and start thinking about building a new marina down the coast between DP Harbor and Oceanside Harbor.

I think we would get more bang for our bucks this way and do a better job of addressing the needs of boaters, the boating industry and the public at large.

Thank you for your kind consideration.

Marc Maury
 Chairman of the Board
 Maury Microwave Corporation

Fernie Sy

From: Gary Peck [gary.peck@cox.net]
Sent: Monday, October 05, 2009 8:13 AM
To: Fernie Sy
Subject: Dana Point Shipyard

I have been a boater at Dana Point Marina for 15 years, either as slip renter or at dry-land storage at Embarcadero, for that period. I have always thought that Dana Point Marina was a unique and beautiful harbor, and true to the original character of the area. It is large enough to accommodate a large number of smaller and mid-size boats, and does not (yet) suffer from crass over-commercialization as the marinas in the north do. We are lucky to have it. Accordingly, I generally do not favor the changes proposed Revitalization Plan for the marina, just to provide it with more parking places for cars, large boats and "Fish 'n Chips" spots.

In particular, I strongly believe the County's proposal to downsize the Dana Point Shipyard's size and services provided is a grave disservice to the boaters at Dana Point. Of particular concern is the proposal's elimination of an engine crane and DIY area. What am I supposed to do if I need to some serious work on my engine that requires removal? Or want to work on it myself (or call in another boat repair company) to save some money? Under this proposal, I will be forced to have the boat towed 15 miles to Newport and pay the exorbitant prices of the shipyards there. This is really unacceptable to me as a boater, resident of the area, and local taxpayer. Please keep these views in mind when making your final decision on this matter - I think they are representative of the majority of the boaters and constituents of the area.

Gary Peck
59 Westgate
Laguna Niguel, CA

East Basin slip # I-39

September 30, 2009

Bonnie Neely
Teresa Henry
Karl Schwing
Fernie Sy

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RE: Dana Point Harbor Revitalization

I am a Dana Point resident, a boater, and a patron of the commercial businesses in the Dana Point Harbor. I am sure you are tired of all the letters and emails concerning the upcoming Dana Point Revitalization, but hope you will give me a few minutes of your time.

It upsets me to see how the Orange County Government is working for some of the people, not all of the people. They have selected to align themselves with the Merchants in the Harbor overlooking the thousands of boats that reside there. Collectively, they call themselves Dana Point Harbor NOW. They have used the resources of the County (email list, monthly marina billings, postings in the harbor) to get their message out while refusing the opposition the same opportunities. I thought the government was supposed to be fair!

I seriously doubt you will find anyone that is totally against the Revitalization as all parties agree it is needed. The conflict comes from the landside (the county and the merchants) doing all the taking and the waterside (boaters) doing all the giving.

The landside is not giving up anything, but gaining everything. The boaters are giving up slips, boater parking, trailer boating parking, boat dry/mast up storage, and one acre of our shipyard, while not gaining anything. This hardly seems equitable or fair to me. How about you?

First, and foremost, the Dana Point Harbor is a harbor! Shops, restaurants, and hotels can be built anywhere, where as a harbor can not. Secondly, in this time of economic tough times, all of us need to live within our means. Said another way, we should pay our own way. Not depend on others to finance it for us or take from others.

If the Merchants want to upgrade their shops, so be it – but at their expense within their existing footprint. The Boaters generate enough revenue to cover the expenses related to improving the docks and supporting land areas within their footprint. This way, everyone wins!!!

You will not see as many boaters at the hearing on October 8th as you will see supporters of DP Harbor NOW, but hopefully that will not stand in the way of fairness and “doing the right thing”. DP Harbor NOW is providing free buses, free meals, and giving away Merchant Gift Certificates to those who agree to support their cause. Nothing like buying votes! And if that’s not bad enough, 99% of the DP Harbor Now group does not have

anything at risk or at stake (there will always be a coffee shop in the harbor). The Boaters do!!!! They do not have other options.....

I trust you will let your conscious and the Tidelands Trust guide your decision at the upcoming hearing.

Thank you for your time and civic leadership!

Sincerely,

J. Thomas Stallings
Boaters 4 Dana Point

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COASTAL COMMISSION

September 29, 2009

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, Ca 90802

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

As a 32 year resident of Capistrano Beach/Dana Point, I want to express my strong support for the City of Dana Point LCPA regarding the Dana Point Harbor. This LCPA is most important to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality, beautify and improve public assembly areas, which will encourage further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,



Penny Mangione
26812 Vista Del Mar
Capistrano Beach, CA 92624

BARBARA MERRIMAN
34300 LANTERN BAY DRIVE, #4
DANA POINT, CA 92629

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CALIFORNIA
COASTAL COMMISSION

September 30, 2009

To all members of the California Coastal Commission:
(Copies to Sherilyn Sarb, Teresa Henry, Karl Schwing
And Fernie Sy)

Dear Chairwoman Neely, and all Commissioners;

Your staff has worked long hours bringing the LCP
changes and amendments to you for the Dana Point
Harbor Revitalization Project, No. 1-08.

As a former Planning Commissioner for the County of
Orange, I have not understood why you are agreeing to
hear this plan piecemeal, unless it's because of the
merchants who desperately want their commercial
core to be improved. There has been a lot of work to
protect the "Visitor-Serving Commercial Development"
but to approve a large expansion causing the loss of
boater resources is not what the Coastal Act was
written for! Despite the valiant attempts at
compromise, there are still boating resources that are
being lost - including parking, trailer boat parking and
storage, and loss of space for our only shipyard.

One of the first things I learned when looking at a new
plan for development is to look at the whole plan. You
have requested that the developer give you what
amounts to an overview of the second stage of the plan
for the harbor - the slip changes and renovations. It

doesn't look detailed enough for you to make a judgment on how it will affect the commercial core, or subsequent parts of the plan

Down the road, the developer will be bringing you the next phase of the plan, followed by all the rest of the phases until the revitalization is complete.

Can you honestly determine what the cumulative impacts will be for this plan that is before you, when you know that the other phases of the plan will be coming to you like a jigsaw puzzle over the next several years? You recently approved the Headlands and the Town Center Plan – both in Dana Point. Were the impacts on the harbor considered at the time of these hearings?

If you have a crystal ball, I would like a peek into it to see what those cumulative impacts will be!

In the interests of responsible planning, please deny this phase of the plan until you can see the Revitalization Plan as a whole.

Cordially,

A handwritten signature in cursive script, appearing to read 'Barbara Merriman', with a long horizontal flourish extending to the right.

Barbara Merriman

September 29, 2009

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

RECEIVED
South Coast Region

OCT 1 2009

CALIFORNIA
COASTAL COMMISSION

Subject: Land Use Plan Amendment DPT-MAJ-1-08
Dana Point Harbor Revitalization Plan

Attention Coastal Commissioners:

My wife and I are very concerned about the Dana Point Harbor Revitalization Plan. We have lived in Dana Point and also have had a boat in Dana Point Harbor since 1974. Our children and now our grandchildren are living in Dana Point.

We do not like to see overbuilding in Dana Point Harbor. Currently, Dana Point Harbor has a lot of openness which beautifies its setting. By expanding square footage of commercial developments and building 60 and 65 foot high structures will destroy the beauty and openness of our marina. Our friends, neighbors, and boat owners are not happy with this plan

My wife and I have owned 22-27 foot boats which were docked in slips in the Dana Point Harbor since 1974. We currently have a 25 foot Sea Ray power boat in the harbor. We do not like to see the reduction of 28 foot slips with this plan.

Why can't the Revitalization Plan just remodel the existing structures? We would like the Coastal Commission to consider the residents of Dana Point and not just the tourism draw and the gains from commercial profits. There is just so much space and openness in the marina, and this plan of overbuilding will ruin our now beautiful harbor. Please don't approve this Revitalization Plan.

Sincerely yours,



Michael and Katherine Sgambellone
34568 Camino Capistrano
Capistrano Beach, CA 92624
949-496-8173

SOUTH COAST



WATER DISTRICT

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South Coast Region

SEP 29 2009

CALIFORNIA
COASTAL COMMISSION

September 24, 2009

Supervisor Bonnie Neely, Chair
California Coastal Commission
Office of the Board of Supervisors
825 Fifth Street, Room 111
Eureka, CA 95501

Dear Supervisor Neely:

As you are aware, the Directors of South Coast Water District voted last Thursday, September 17, 2009 to approve a project concept for development of 8-9 acres of the San Juan Creek Property located in the Capistrano Beach area of the City of Dana Point. District staff was directed to proceed with negotiation of a ground lease for the project. We are pleased to have Pacifica West Development Inc. as the developer of a boat and recreational vehicle storage facility as their development concept is consistent with the District identified objectives for the Site, including:

- Provide facilities that are needed and will be used by Dana Point and Orange County residents and by SCWD customers
- Provide facilities that are attractive and acceptable to the City of Dana Point and to nearby residents and commercial users
- Provide facilities that are operated efficiently and professionally
- Maintain ownership of the SJC property and generate long-term revenue to SCWD via a ground lease to a developer

South Coast Water District has been actively engaged in assessing use concepts for its local property since 2006. The development concept of Pacifica West Development, Inc. (boating and recreational vehicle storage facility) is completely separate from any projects currently underway or proposed future projects for the Dana Point Harbor Revitalization. That being said, the District believes the development of the San Juan Creek property is meant to compliment the efforts of the Harbor development, enhance the coastal experience for the boating community, and improve coastal access for the boating community. At our Committee meeting on September 3, 2009 and the Special Board of Directors meeting on September 17, 2009 we heard public comments from the Dana Point Boaters Association and community members in support of the project. If successfully developed, the proposed boat storage and marine services facility would surely augment current services already available in the Harbor.

Mailing Address: P.O. Box 30205, Laguna Niguel, CA 92607-0205

DPT-MAJ-1-08 Addendum Attachment #2

Street Address: 31592 West Street, Laguna Beach, CA 92651

Fax: (949) 499-4256

Phone: (949) 499-4555

In closing, it should be noted that South Coast Water District looks forward to a positive outcome in support of the City of Dana Point's Local Coastal Program Amendment (DPT-MAJ-1-08) which will be before your Commission on October 8, 2009 in Oceanside. Approval of the LCPA will mean that the County of Orange will be one step closer to providing the improved water quality, conservation and enhanced coastal access opportunities that come with the Revitalization Project.

Please feel free to contact me with any comments or questions you may have.

Very truly yours,

SOUTH COAST WATER DISTRICT

A handwritten signature in black ink that reads "Michael P. Dunbar". The signature is written in a cursive, flowing style.

Michael P. Dunbar
General Manager

MD:jb

cc: Peter Douglas, Director, California Coastal Commission
Sherilyn Sarb, Deputy Director, California Coastal Commission
Teresa Henry, District Manager, California Coastal Commission
Brad Gross, Dana Point Harbor Development
Doug Chotkevys, City of Dana Point

September 17, 2009

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South Coast Region

SEP 29 2009

CALIFORNIA
COASTAL COMMISSION

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca 90802

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

As a ~~33~~ year resident of Dana Point Harbor, I consider myself an active member of the community. I want to express my strong support for the City of Dana Point LCPA regarding the Dana Point Harbor. This LCPA is most important to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality, beautify and improve public assembly areas, which will encourage further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,



Cindy Berquist
33042 Mesa Vista Dr.
Dana Point, CA 92629



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

RECEIVED
South Coast Region

September 25, 2009

SEP 29 2009

CALIFORNIA
COASTAL COMMISSION

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

As a 12 year resident of Dana Point, I consider myself an active member of the community. I want to express my strong support for the City of Dana Point LCPA regarding the Dana Point Harbor. This LCPA is most important to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality, beautify and improve public assembly areas which will encourage further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,

Mr. Gayle Pace
1 Reina
Dana Point, CA 92629

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South Coast Region

September 17, 2009

SEP 28 2009

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

CALIFORNIA
COASTAL COMMISSION

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

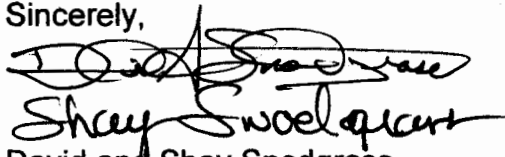
Dear Chairwoman Neely:

Please accept this letter as my strong support for the City of Dana Point LCPA regarding the Harbor.

This amendment is critical to the South Orange County economic climate. It will work towards enhancing harbor water quality and will allow for long over-due improvements and upgrades to the harbor such as the beautification and improvements to public assembly areas which will encourage further community involvement and provide much needed handicapped access.

As a -- year visitor to and user of the restaurant and fishing facilities at Dana Point, I consider myself an active member of the harbor community, and I therefore urge you to support the approval of this amendment.

Sincerely,

The block contains two handwritten signatures in black ink. The first signature is 'David Snodgrass' and the second is 'Shay Snodgrass'. Both are written in a cursive, flowing style.

David and Shay Snodgrass
94 Plateau
Aliso Viejo, Ca 92656

TO: CALIF.
COASTAL
COMMISSION

DANA POINT HARBOR REVITALIZATION PLAN
LAND USE PLAN AMENDMENT DPT-MAJ-1-08

Rick Strickland
3044 Via Serena S Unit Q
Laguna Woods, CA 92637

4-25-09

I AM WRITING TO GIVE MY VIEWS RE THE PRESENT
PLANS NEGATIVE IMPACT TO REDUCE DANA POINT SHIPYARD'S
AREA SIZE.

RECEIVED
South Coast Region

SEP 28 2009

I HAVE OWNED 6 POWER BOATS FROM 27 CALIFORNIA COASTAL COMMISSION HARBOR
SINCE 1972 TO THE PRESENT, & USED THE WIDE RANGE OF SERVICE
OF THE SHIPYARD. I HAVE ALWAYS WITHOUT EXCEPTION FOUND
THEM TO BE OF THE HIGHEST PROFESSIONAL & PERSONABLE LEVEL.

HOWEVER, BASED ON THE PRESENT PLANS TO REDUCE THEIR SIZE
I DO NOT HAVE CONFIDENCE THAT THEY WILL BE ABLE TO MAINTAIN
THEIR PRESENT SERVICE LEVEL, LET ALONE CONTINUE TO BE
A FULL SERVICE YARD FOR THE WIDE RANGE OF NEEDS OF
THE PRESENT & FUTURE SIZE SAIL & POWER BOATS IN THE ENTIRE HARBOR.

CUTTING BACK ON THEIR SIZE & THUS SPACE FOR EQUIPMENT,
AS CRANES, WILL DEFINITELY NOT ENHANCE THEIR EFFORTS
TO FULLY SERVE THE PRESENT NEEDS OF EXISTING BOATERS,
BUT ALSO REDUCE THEIR ABILITY & FUTURE GOALS TO SERVE
AN EVOLVING LARGER BOAT POPULATION, WITHOUT BOATERS
RESORTING TO HAVE TO GO TO OTHER PORTS. THIS TAKES
ON ADDITIONAL IMPORTANCE UNDER BAD SEAWEATHER &/OR TOW SITUATIONS.

IN SHORT, NEGATIVELY IMPACTING THE SHIPYARD BY
REDUCING THEIR SIZE WILL, WITHOUT DOUBT, IN TURN
NEGATIVELY IMPACT THE PRESENT & FUTURE ENJOYMENT,
SAFETY, & ECONOMIC OWNERSHIP OF RECREATIONAL & COMMERCIAL
BOATERS IN DANA POINT HARBOR, FOR ROUTINE & EMERGENCY SERVICE.

Rick Strickland

Dana Niguel Dental



Frank Godino D.M.D.

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South Coast Region

SEP 22 2009

CALIFORNIA
COASTAL COMMISSION

September 16 2009

Las Vegas Institute
for Advanced
Dental Studies
LVI



American
Academy of
Cosmetic Dentistry
AACD



American
Dental
Association
ADA

California Dental
Association
CDA

Orange County
Dental Association
OCDA

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca 90802

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPC (DPT-MAJ-1-08)

Dear Chairwoman Neely:

As a merchant of Dana Point Harbor for the past 22 years, and my business the past 31 years, I consider myself an active member of the community. I want to express my strong support for the City of Dana Point LCPC regarding the Dana Point Harbor. This LCPC is most important to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality, beautify and improve public assembly areas which will encourage further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,

Frank Godino DMD
Dana Niguel Dental
34190 Pacific Coast Hwy.
Dana Point, CA 92629

34190
Pacific Coast Highway
Dana Point
California
92629

949.493.7004



Chambers of
Judge Jeffrey L. Gunther

The Superior Court

Sacramento County Courthouse
720 Ninth Street
Sacramento, California 95814

Telephone
(916) 874-5751

E-Mail
SEUNCRT@aol.com

RECEIVED
South Coast Region

SEP 28 2009

CALIFORNIA
COASTAL COMMISSION

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca 90802

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

Dana Point was my number one choice to live in retirement from a career of public service. It was chosen by me after a great deal of thought, research, and, consideration. Since moving here five years ago I have become an active member of the community. I have taken an active part in community affairs while continuing to enjoy all the activities the community offers.

I want to express my strong support for the City of Dana Point LCPA regarding the Dana Point Harbor. The proposed upgrade to the Harbor and land based facilities is an important step forward for all of Orange County. The existing harbor and land based facilities are old and tired looking. Each is in need of significant improvement and upgrading. I have taken an active interest in the planning phase that has brought this project before the Coastal Commission for your consideration. I am in complete support of the proposed improvement project. This LCPA is vital to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality and beautify and improve public assembly areas. I believe this will foster further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,

Judge Jeffrey L. Gunther (Ret.)

23 Indigo Way, Dana Point, Ca 92629 PH 949-489-1332



RECEIVED
South Coast Region

SEP 28 2009

CALIFORNIA
COASTAL COMMISSION

September 24, 2009

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

Attention: Teresa Henry

Re: Dana Point Harbor LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

Please find enclosed approximately 217 letters in support of the Dana Point Harbor LCPA referenced above.

These letters are from residents, businesses and visitors who support the revitalization of Dana Point Harbor and urge you to support the Dana Point Harbor LCPA which comes before the board in October. . Please add these letters to the Agenda Package for the Commissioners.

Thank you,

Jim Miller
President
Dana Point Harbor Association

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South Coast Region

September 16, 2009

SEP 28 2009

CALIFORNIA
COASTAL COMMISSION

Mrs. Bonnie Neely, Chair
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca 90802

Attention: Teresa Henry

RE: DANA POINT HARBOR LCPA (DPT-MAJ-1-08)

Dear Chairwoman Neely:

As a three year resident of Dana Point Harbor, I consider myself an active member of the community. I want to express my strong support for the City of Dana Point LCPA regarding the Dana Point Harbor. This LCPA is most important to the South Orange County economic climate to allow for long over-due improvements and upgrades to this Harbor. This amendment will improve our water quality, beautify and improve public assembly areas which will encourage further community involvement and provide much needed handicapped access. I urge you to support the approval of this amendment.

Sincerely,



Mark Sutton
33142 Santiago Drive
Dana Point, CA 92629

***APPROXIMATELY 217 SIMILAR
LETTERS ACCOMPANIED
THIS SUBMITTAL FROM
THE DANA POINT HARBOR
ASSOCIATION LETTER
RECEIVED ON 9/28/09.**



Post Office Box 461, Dana Point, California 92629

10/1/09

TO: California Coastal Commission and Staff (See Distribution List)

RE: Updated Comments By The Dana Point Boaters Association Regarding Proposed LCPA
DPT-MAJ-08, aka Dana Point Harbor Revitalization Plan Land Use Component

Dear Commissioners and Staff:

The Dana Point Boaters Association would like to update its submission dated September 15, 2009 regarding the Dana Point LCPA DPT-MAJ-08, based on information recently obtained.

In our prior submission we stated that in Planning area one (MSC 1) there appears to be a loss of boater launch and dry storage square footage of about 8.5% compared with what is currently available. We previously stated that this loss would be problematic and a likely CDP issue. After discussions with Coastal Staff on 9/29/09 we now understand that any changes to the area designated as MSC 1 are an LCPA issue that requires the Commissioners attention prior to passage of the LCPA as written. We are therefore formally requesting the Commissioners to amend the area known as MSC 1 to restore the same square footage as currently exists, thereby to protect dry storage and boat launching capabilities within the harbor. The proposed parking garage takes away too significant a portion of this land, and there is no remediation that makes up for the loss of such land within the harbor to store and launch boats. The dry stack storage facility that may or may not be constructed is not mitigation for the loss of landside storage, as it a) does not accommodate the needs of some boats including boats below or beyond a certain size range, power boats with certain configurations and all sailboats, b) does not provide the same type of access that dry storage users presently enjoy – it only provides boat access by appointment (assuming an appointment is available), and c) removes significant portions of the land used for these purposes today.

The Coastal Staff has done a commendable job of protecting boaters against in water slip loss by recommending a zero slip loss policy. Landside boat storage issues are similarly protected under the Coastal Act, and deserve the same level of protection. Therefore the allowance of the reduction in the land allocated to such storage and launching would be directly contrary to both the Coastal Act and the Staff recommendations regarding slip loss and the need to protect the highest coastal uses.

Related to the loss of 8.5% of the launch and dry storage area are the policies in the section 4 of the LUP that protect such dry storage and launch facilities. In particular section 4.2.2-10 from the LUP (Exhibit 17) continues to attempt to provide boater protections that are inconsistent with the proposed reduction in launch and storage space within the LCPA:

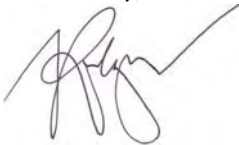
4.2.2-10 Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:

- *Redesign and expand the existing boat launch facility to maximize the number of vehicle with trailer parking spaces meeting minimum Department of Boating and Waterway guidelines (10' X 40'). Larger vehicle with trailer parking spaces shall also be provided in adequate amount to meet demand as determined through environmental review process (minimum 292 spaces);*
- ***Retain the existing number of dry boat storage spaces until a replacement dry stack storage facility is constructed and open for use. Maintain a minimum of 93 mast up surface boat storage spaces within the Harbor at all times, additional spaces shall be provided where feasible;***

This language not only ignores our previous suggestions to memorialize the total number of existing launch and dry storage spaces within this and other sections of the LUP (today the number of mast up spaces is many times greater than 93 – how can the retention objective highlighted above be achieved if it is not measurable?) and to increase the minimum number of mast up storage spaces, but it is incongruent with the notion of an 8.5% reduction in the space presently allocated within the Harbor for such uses. We agree that maintenance of at least the existing numbers is a requirement, consistent with the newly revised in-water slip policy, but are having difficulty reconciling the logic in the LUP as to how this can be possible.

We respectfully request the Commission to make the appropriate amendments to the LCPA and LUP to protect all boaters' interests and rights within the Harbor.

Sincerely,



Rodger Beard
President
Dana Point Boaters Association

A nonprofit, all volunteer California Corporation representing over 500 dues paying recreational boaters of Dana Point Harbor

www.DanaPointBoaters.org

RodgerBeard@DanaPointBoaters.org

(949) 485-5656 (main)

(949) 500-3747 (mobile)

Distribution List:

Bonnie Neely, Commissioner, Chair
William A Burke, Commissioner, Vice Chair
Mary K. Shallenberger, Commissioner
Larry Clark, Commissioner
Steven Blank, Commissioner
Sara Wan, Commissioner
Steven Kram, Commissioner
Patrick Kruer, Commissioner
Khatchik Achadjian, Commissioner
Ross Mirkarimi, Commissioner
Esther Sanchez, Commissioner
Mark W. Stone, Commissioner
Peter M. Douglas, Executive Director
Sherilyn Sarb, Deputy Director
Teresa Henry, District Manager
Karl Schwing, Supervisor, Regulation and Planning
Fernie Sy, Coastal Program Analyst
Michael Chrisman, Non Voting
Dale E. Bonner, Non Voting
Paul Thayer. Non Voting
Jim Wickett, Alternate
April Vargas, Alternate
Dan Secord, Alternate
Meg Caldwell, JD, Alternate
Adi Liberman, Alternate
Sharon Wright, Alternate
Sarah Glade Gurney, Alternate
Brooks Firestone, Alternate
Dr. Suja Lowenthal, Alternate

**Embarcadero Marina
September 4-7 Entry Counts**

					Labor Day w/e (4 Days)	Labor Day w/e (4 Days)	Labor Day w/e (4 Days)	
					Friday-Monday	Friday-Monday	Friday-Monday	
	Friday 9/4/09	Saturday 9/5/09	Sunday 9/6/09	Monday 9/7/09	9/4/07 to 9/7/09	8/29/08 to 9/1/08	8/31/07 to 9/3/07	
Gate Count	178	228	216	184	806	929	746	Largest volume was NOT this year. But this year Catalina Express customers parked elsewhere.
Vehicle With Trailer								
Single Axle	15	57	49	51	172			32% <-% of total tow vehicles
Double Axle	27	59	53	43	182			34% <-% of total tow vehicles
Triple Axle	3	6	6	2	17	371	70%	3% <-% of total tow vehicles
Single Ski	10	26	16	24	76			14% <-% of total tow vehicles
Multiple Ski	17	20	21	27	85	161	30%	16% <-% of total tow vehicles
Sailboat	0	0	0	1	1	246	46%	<<- % of total launches that were jet skis But actual percentage is probably higher since % calculation assumes 2 jet skis per multi jet ski trailer.
Total	72	168	145	148	533	<<- Assumption: this is total launches		
	**	**	**	**	**			
Parking	***	***	***	***	***			
Car/Truck	140	178	198	148	664			
Car/Truck With Kayak	1	4	1	8	14			

**Difference from gate count to actual is due to entries when no gate attendant on duty.

***Below is the breakdown of Car/Truck Parking.

Color Code Keys:

Boat tow vehicles (Boats Launched)	Jet Ski tow vehicles	Boater parkers
	Jet Skis Launched	Non Boater parkers
		Merchant employees

Parking	Friday 9/4/09	Saturday 9/5/09	Sunday 9/6/09	Monday 9/7/09	9/4/07 to 9/7/09	
Day Parking	0	8	14	12	34	
Launch Guests	0	4	8	6	18	
Catalina Express	0	0	0	0	0	<<- moved elsewhere for Labor Day weekend
EMB Tenants	82	105	107	89	383	401 60% <-% of total use was boater parking
EMB Employees	23	16	16	14	69	
CBWC Employees	7	7	7	7	28	
Merchant Employees	28	38	46	20	132	263 40% <-% of total use was non boaters
Total	140	178	198	148	664	
						Merchant Employees alone comprise 20% of total parkers

Day Parking: general commerical

Launch Guests: guests of boaters (EMB tenants)

EMB Tenants: Dry storage boaters (boaters in dry storage and trailered in for day)

EMB Employees: non boaters with Embarcadero staff key cards

CBWC Employees: Other concessionaires, primarily jet ski rentals

Merchant employees: employeeew not parking in dedicated slip renter boat parking



OC DPH – EXISTING LAUNCH RAMP AND SURFACE STORAGE
DPT-MAJ-1-08 Addendum Attachment #2



OC DPH – PROPOSED LAUNCH RAMP AND SURFACE STORAGE
DPT-MAJ-1-08 Addendum Attachment #2

OCT 5 2009

TH 22a

10/2/09

Dear Commissioners:

Pertaining to ITEM NO: Th22a we urge you:

CALIFORNIA
COASTAL COMMISSION

- DENY the proposed City of Dana Point Land Use Plan Land Use Plan Amendment DPT MAJ 1-08.
- DENY the Amended Plan until which time the City of Dana Point undertakes accurate study of impacts specific to boating access and other relevant issues (see below.)

We focus on just one of the problems with the proposal, namely the reduction in small boat slips: The City of Dana Point will present Boater Preference Surveys . These must be dismissed as extensions of promotional activities since their methods are faulted in several ways. The sample of boaters, method of tracking and registering, the limited options, and limited audience do not a democratic or demographic survey make. These surveys are not factual, even as a limited measure of the opinions of a limited group. Dana Point plans proceed from commercial objectives for their development, rather than scientific study of impacts and creative incorporation of public benefit.

By contrast, the City of Dana Point might easily have collected useful data to assess boater access. For instance, they might have placed a web-cam at the entry to the harbor and produced a "Boater Usage Study" tracking the scale and type of boat that enters and exits. A webcam was placed by the City of Dana Point at nearby Doheny State Beach for observing surf conditions so there is no technical barrier. Cameras would reveal a wealth of information about who, in fact, uses Dana Point Harbor.. Such data would help to interpret the impacts of changes to slip counts and other boater access issues.

We expect that a real study of boater access will reveal that the predominant users of Dana Point are small vessels- paddlers, smaller sailboats, and family-sized fishing boats. By contrast very large boats, often the domain of the very rich, are sparsely used. Reducing small boat slips will reduce affordable boating access and the negative impact on affordable public access is likely to be disproportionate to the number of slips lost. While the Amended Plan indicates a goal of not losing any boat slips in total numbers, the Amendment is not specific enough about boat slips nor does it take adequate consideration of the whole range of boaters. The Coastal Commission mandate is not properly enacted unless applicant assesses real data and from that data makes proposals that assure no loss of public access.

We urge you to DENY Proposal of City of Dana Point and to DENY the Amended plan. Note that the Amendment is largely the work of CC staff rather than the direct efforts of Dana Point. If you approve even the amended proposal you will occupy your staff for years with the job of coming up with thoughtful solutions in reaction to the substandard efforts of Applicant. Applicant has failed to assess baselines pertaining to traffic, boat slips, boat launch flow and other key planning data, resulting in design that is not in the public interest of Californians.

There needs to be a "sea-change" in the approach of the City of Dana Point before any element of this proposal is approved, even conditionally. Otherwise, you will encumber the citizens of California and the Coastal Commission with an overly burdensome watchdog role. The City of Dana Point demonstrates resolve to wait out changes in Commission composition and cycles of public interest to gain its agenda. Please, the only message that will shift this debate is a solid "NO."

Steven J. Appleton
James R. Appleton



Contact Information:

Steven Appleton
2703 Benedict St.
Los Angeles, Ca 90039
(310) 740 7294

James R. Appleton
1861 Rossmont
Redlands, Ca 92373

(please find a digital copy of this document at <http://auralspace.com/danapoint/habor.pdf>)



OC DanaPointHarbor

Local Coastal Program Amendment

September 2009



City of Dana Point LCPA 01-08 / Coastal Commission Reference No. DPT-MAJ-01-08, Dana Point Harbor Revitalization Plan and District Regulations



Located in the City of Dana Point
Operated by the County of Orange, OC Dana Point Harbor Department

LCPA – Suggested Modifications

1. Protection of two existing park areas. AGREE WITH STAFF
2. Remove the free standing Marine Retail Store in the Marine Services Commercial (MSC) Area. AGREE WITH STAFF
3. Coastal Commission position on private yacht clubs. AGREE WITH STAFF
4. **No net loss of slips / not to exceed 155 / 32' average slip size**
5. Boater parking ratio. AGREE WITH STAFF
6. Visitor serving uses are incidental to coastal-dependent uses. AGREE WITH STAFF
7. Assessment of non-vehicular transit (Seasonal water taxi, shuttle & Tri-City Trolley). AGREE WITH STAFF
8. Tree trimming policy to protect Herons, Egrets & Raptors. AGREE WITH STAFF
9. Preservation of existing lower cost accommodations. AGREE WITH STAFF
10. **All Launch Ramp parking must be 10' x 40'.**

Areas of Possible Controversy with Some Members of the Public

1. Boat Slips

a. **No Net Loss of Slips / Not to Exceed 155 Loss**

2. Parking Ratio for Boat Slips & Commercial Core Parking

AGREE
WITH
STAFF

3. Commercial Core Development vs. Launch Ramp Parking, Surface Boat Storage & Shipyard

AGREE
WITH
STAFF

a. All **Launch Ramp Spaces 10' x 40'**

b. Remove Stand Alone Marine Retail Store in MSC

AGREE
WITH
STAFF

4. Visual Resources

AGREE
WITH
STAFF

No Net Loss of Slips / Not to Exceed 155

Staff Proposed 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. However, if conformance with current engineering and 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). Under no circumstances shall the net loss of slips exceed 155 slips and the average slip length shall not exceed 32 feet.**

No Net Loss of Slips / Not to Exceed 155

Applicant Proposed Policy 4.2.2-6

- **Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be to minimize the net loss of slips. If conformance with current engineering and ADA design requirements, and/or the provision of larger slips to meet demands, requires a reduction in the quantity of slips, slips should be replaced, if feasible, in new berthing areas elsewhere in the harbor. The net loss of slips may range between 155 and 225 slips and the average slip length shall not exceed 32 feet.**

No Net Loss of Slips / Not to Exceed 155

- 1. June 2009 Staff Report supported a loss not to exceed 477 with an average slip size of 34'.**
- 2. Staff requested that we continue to work with boaters and try to return to them with a consensus plan for the Marina Renovation.**
- 3. Since the June hearing, three additional Boater Focus Group (BFG) Meetings were held, analyzing 20 different design layouts. Four design alternatives were selected by the BFG, which were then voted on by more than 600 Dana Point Boaters.**
- 4. The boater selected plan included a loss of 209 slips with an average slip size not exceeding 32'.**

All Launch Ramp Spaces 10' x 40'

Staff Proposed Policy 4.4.1-3

-The existing vehicle with trailer parking spaces shall be reconfigured such that all spaces meet the minimum California Department of Boating and Waterways guidelines of 10 x 40 feet.

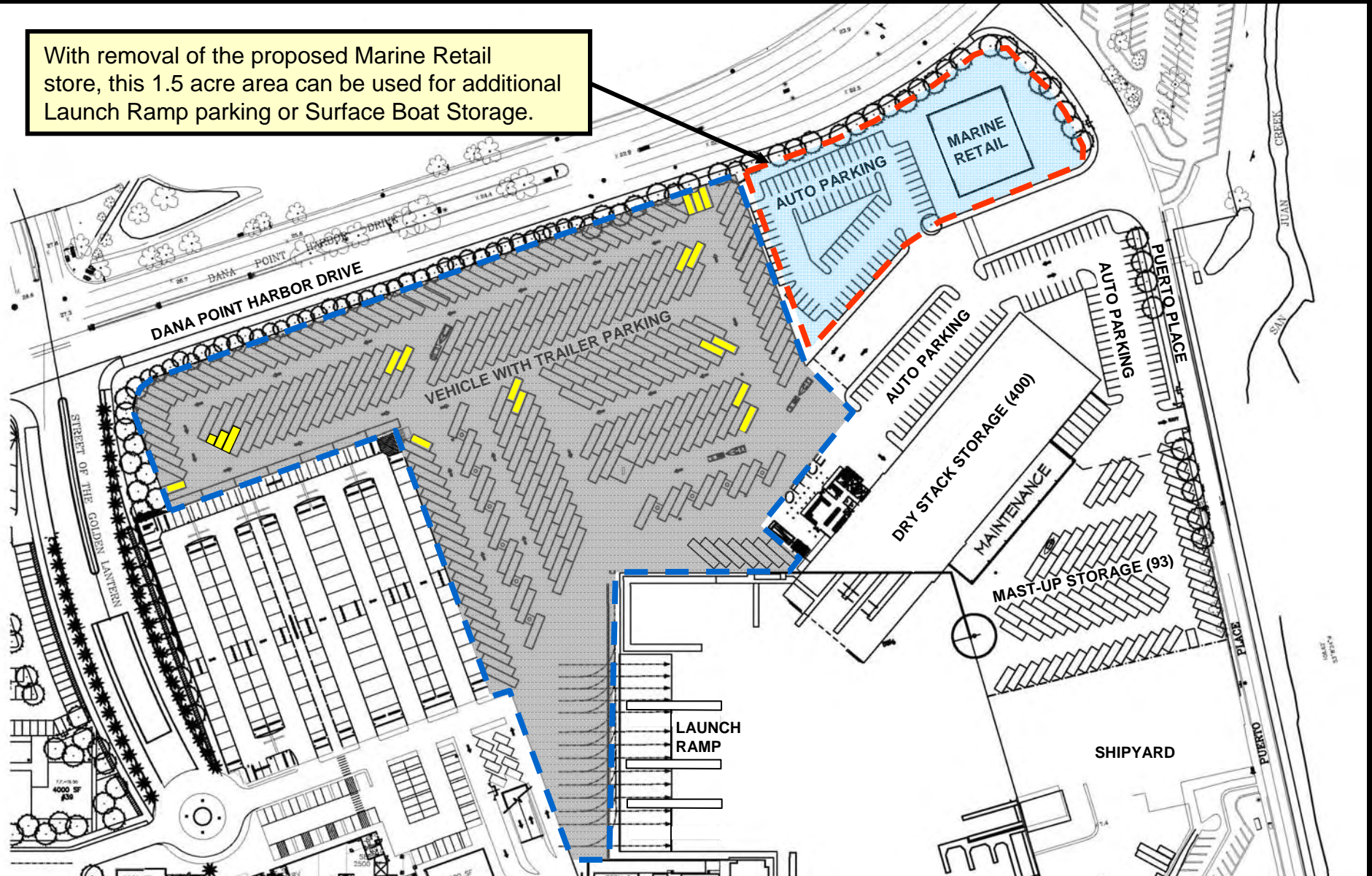
Applicant Proposed Policy 4.4.1-3

-The existing vehicle with trailer parking spaces shall be reconfigured such that spaces meet the minimum California Department of Boating and Waterways guidelines of 10 x 40 feet, to **the greatest extent feasible.**

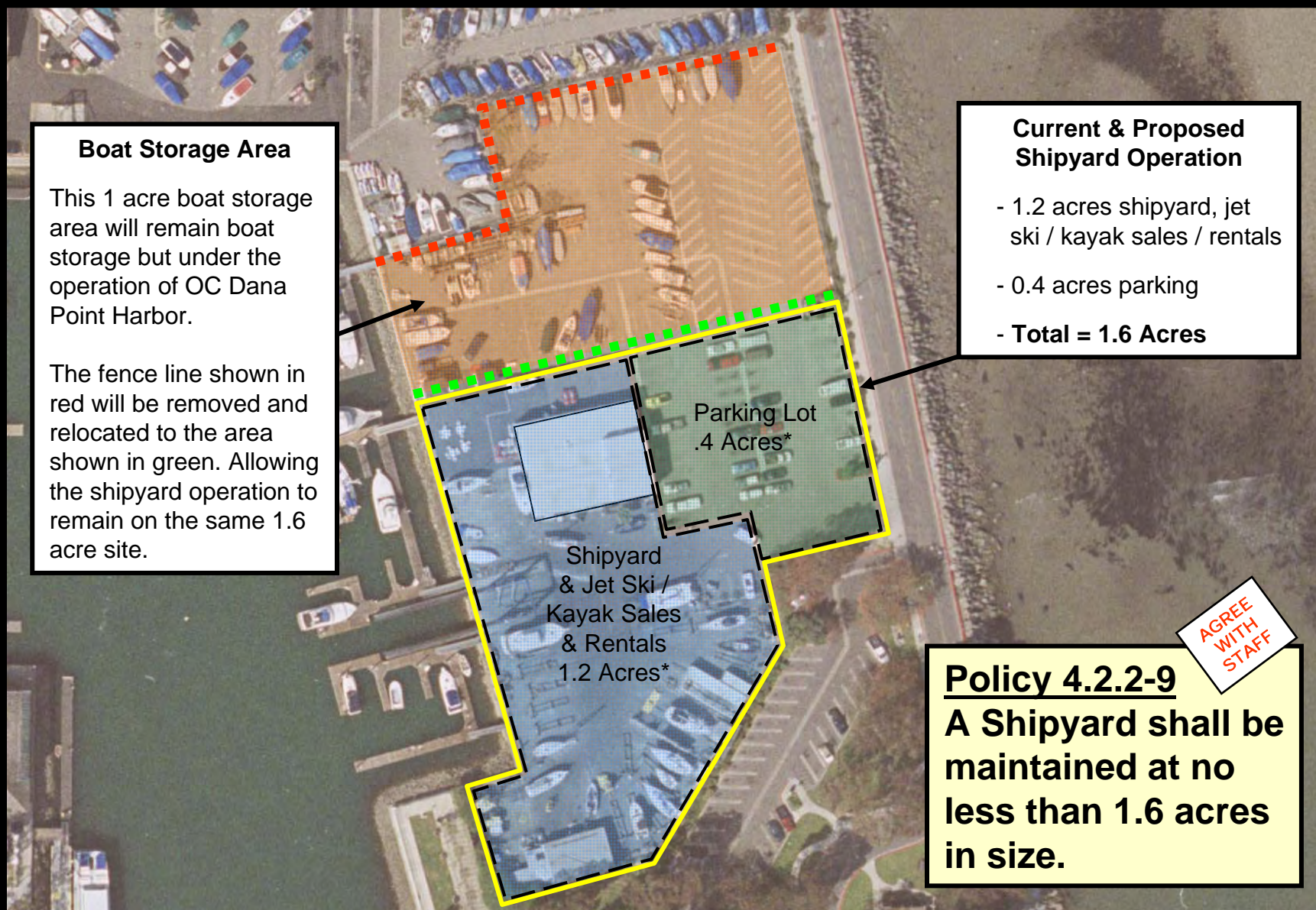
All Launch Ramp Spaces 10' x 40'

- 1. Less than 10 % of the spaces in the existing launch ramp lot today meet the 10' x 40' DBW Guideline.**
- 2. More than 95% of the spaces in the proposed launch ramp lot schematic design meet the 10' x 40' DBW Guideline.**
- 3. Design flexibility may require some spaces at the end of a row of parking to be shorter than 40' in length in order to allow for sufficient turning movements.**

With removal of the proposed Marine Retail store, this 1.5 acre area can be used for additional Launch Ramp parking or Surface Boat Storage.

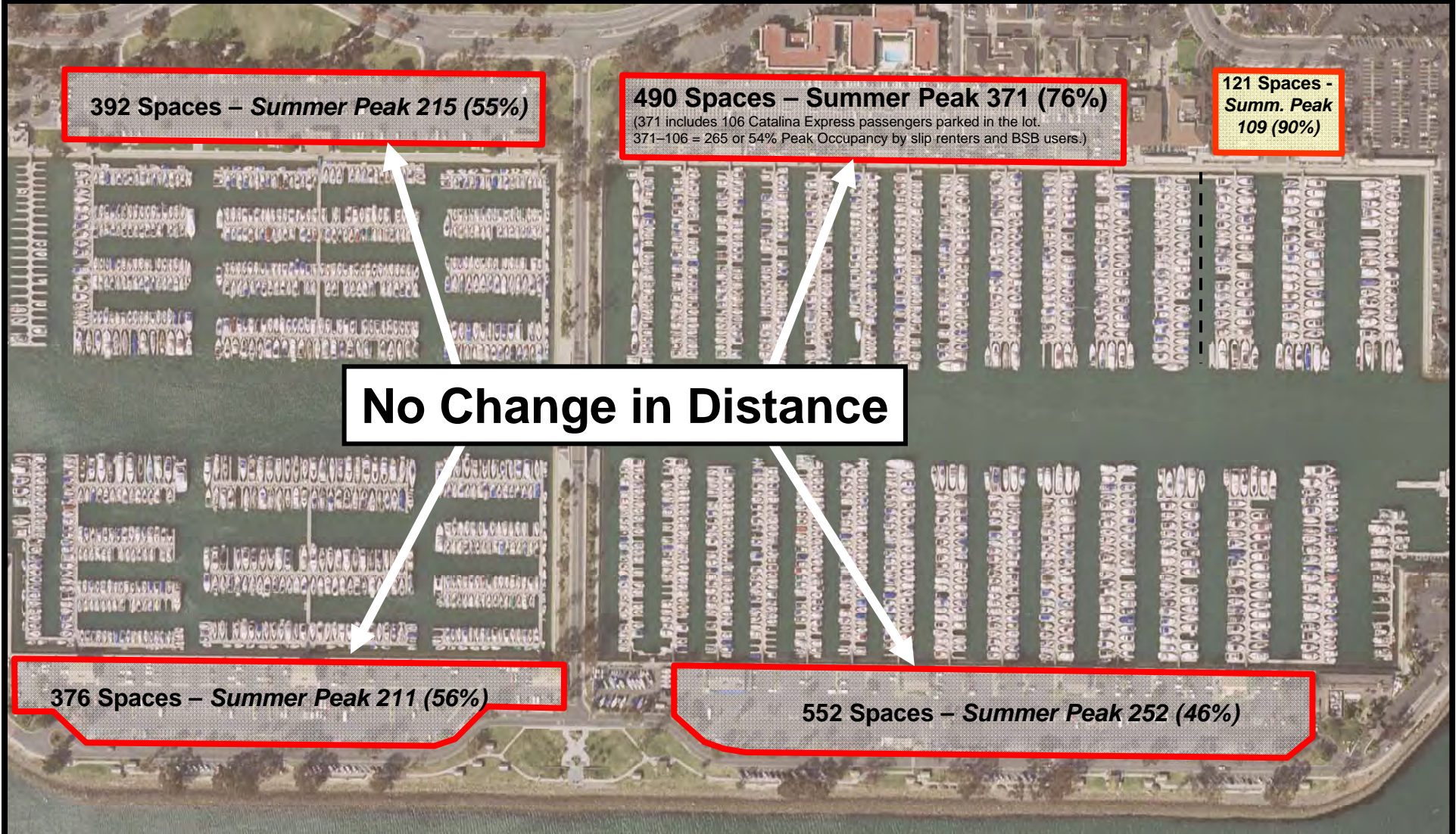


Priority Use – 292 Vehicle-with-Trailer Parking Spaces @ Launch Ramp

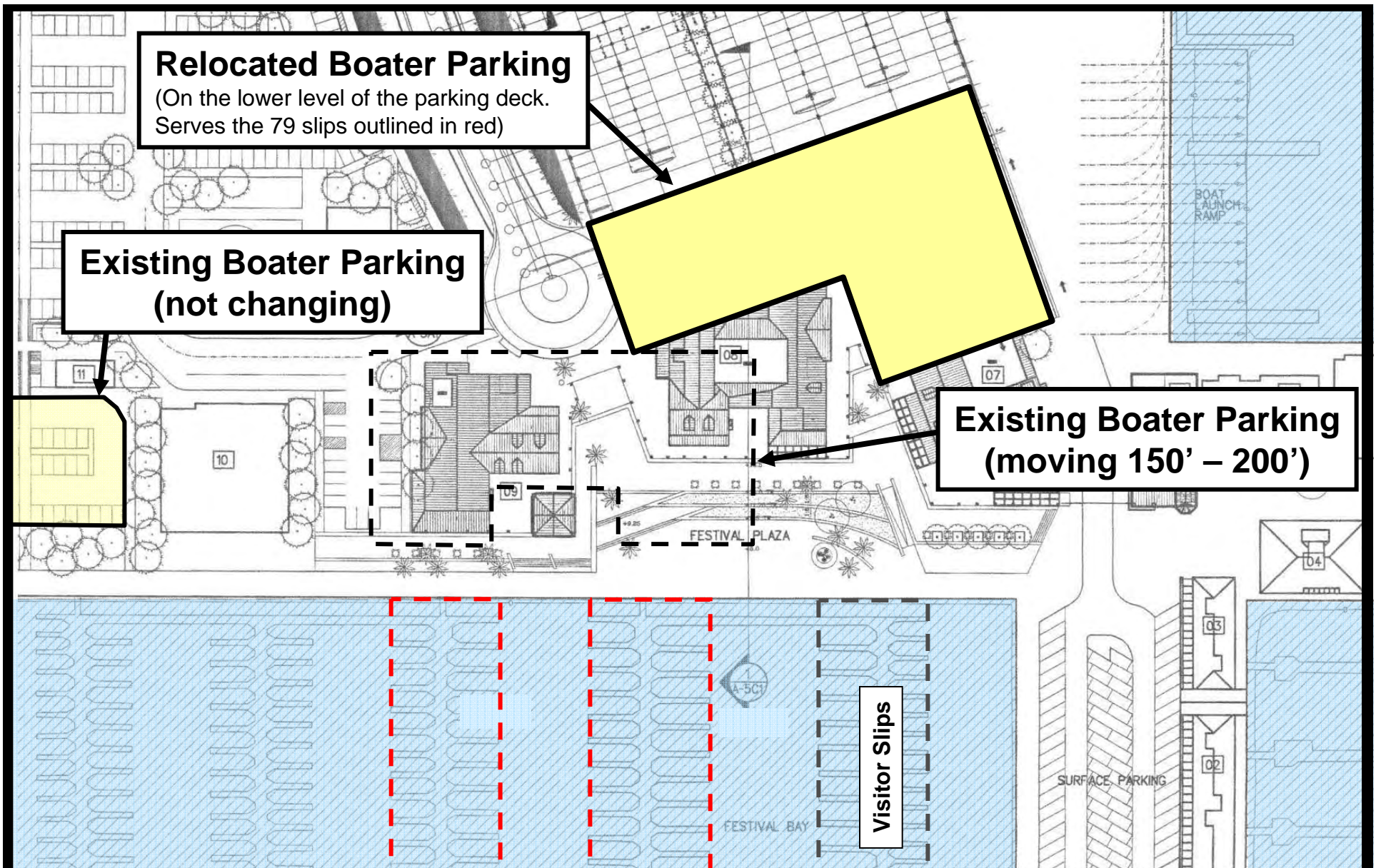


Current & Proposed Shipyard Operation - 1.6 Acres*

* Acreages are approximate



Existing Boater Parking – Peak Occupancy - Summer 2006



Proposed Relocation of Boater Parking



Marina and Visitor Serving Uses & Improved Public Views of Bluffs

14



Improved Vehicular Access & Improved Public Views



Proposed Pedestrian Promenade – Pedestrian Access



Proposed Festival Plaza / Public Assembly Area & New Public Views of Coastline



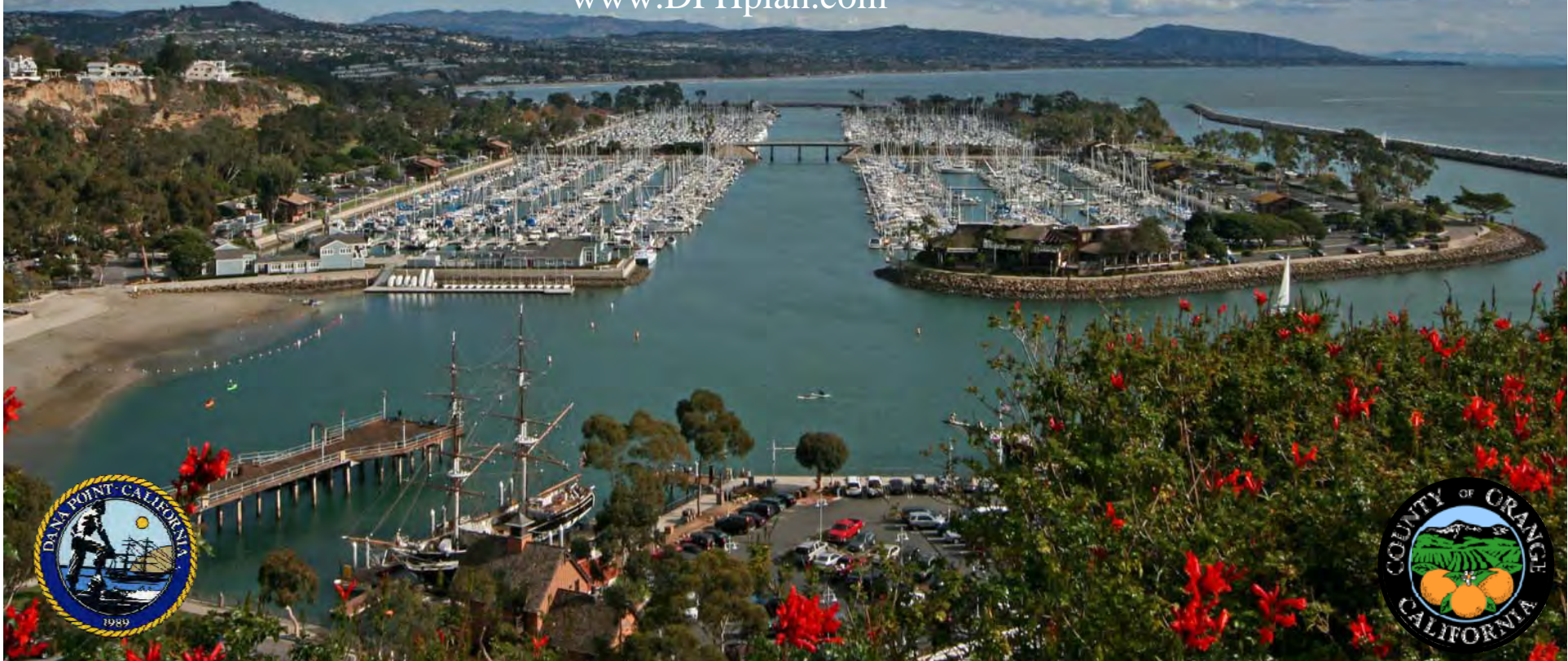
Local Coastal Program Amendment

September 2009

Brad Gross, Director

(949)923-2236

www.DPHplan.com



CALIFORNIA
COASTAL COMMISSION

RECEIVED

South Coast Region

OCT 05 2009

RECEIVED

CALIFORNIA
COASTAL COMMISSIONFORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Name or description of project, LCP, etc.: City of Dana Point LCP Amendment
Date and time of receipt of communication: Oct 2, 2009 11:30 am.
Location of communication: La Jolla, CA
Type of communication (letter, facsimile, etc.): Personal meeting
Person(s) initiating communication: David Neish
Person(s) receiving communication: Pat Krueger

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

City of Dana Point agent reviewed a handout which included the project description and the two ^{remaining} issues with CCC Staff. All other the suggested items the applicant and staff were in agreement. The two remaining issues were the amount of slips being reduced. The applicant was suggesting a range between 155 and 225 slips. The other issue was involving the launch ramp parking. CCC Staff was suggesting all parking in the area be 10'x40'. Applicant was suggesting that up to 18 spaces be allowed to be less than 40' long. A brief description was also presented regarding the ship yard and that the current leasee wanted more land (land) than presently exists.

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.

Fernie Sy

From: Sherilyn Sarb
Sent: Thursday, October 01, 2009 2:30 PM
To: Fernie Sy; Karl Schwing
Cc: Teresa Henry
Subject: FW: Dana Point Revitalization

For the file

***Sherilyn Sarb, Deputy Director
California Coastal Commission***

South Coast District, Orange County (562) 590-5071
San Diego District (619) 767-2370

-----Original Message-----

From: Vanessa Miller
Sent: Thursday, October 01, 2009 1:33 PM
To: Sherilyn Sarb; Jeff Staben
Subject: FW: Dana Point Revitalization

Ex parte

-----Original Message-----

From: Pat Kruer [mailto:PKruer@MonarchGroup.com]
Sent: Thursday, October 01, 2009 1:14 PM
To: Vanessa Miller
Subject: FW: Dana Point Revitalization

fyi

From: Amy Kramer [mailto:amyckramer@gmail.com]
Sent: Thursday, October 01, 2009 1:03 PM
To: Pat Kruer
Subject: Dana Point Revitalization

Dear Mr. Patrick Kruer,

I am writing you today to let you know that I think this Dana Point Shipyard Revitalization, taking away Dana Point Shipyard's land is a bad idea. They have been a full service Shipyard for years. They have put their hard work, time and hearts into making the Shipyard the best it can be. Taking away an acre of their land and everything else being done is going to put a big halt to business, they will loose customers and their good name. Do you know who the Harbor Patrol calls day or night when there is an Emergency with a boat? Dana Point Shipyard. What are they going to do know if you go on with this? There is no other place to do emergency haul outs in the harbor except for Dana Point Shipyard. They are honest, caring and hard workers that want to keep growing with their business. They are concerned about their customers and giving them the best. I hope you take a second thought about what you are doing here, and how many lives this will affect.

Thank you for your time, Amy Kramer

Visit our website at www.monarchgroup.com.

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

RECEIVED
South Coast Region
OCT 5 - 2009
CALIFORNIA
COASTAL COMMISSION

Name or description of the project:: Dana Point Harbor
Time/Date of communication: 9/22/09, 1pm
Location of communication: 22350 Carbon Mesa Rd, Malibu
Person(s) initiating communication: Jim Montrella
Person(s) receiving communication: Sara Wan
Type of communication: phone call

Jim called to say that he had been contacted by Brad and Lisa from the Harbor, interested in finding out his concerns. He discussed some of the major issues, for instance the fact that some of the ramps for the boat launch were not being used. He felt that was the case because of the way they were constructed. That for a variety of reasons it is hard for anything but a small boat to use them. He also felt that the parking spaces for the cars with trailers were too small and they should be widened. Apparently there was a discussion about size of the spaces and lack of room to increase the size. They also discussed the need for public parking as well as boater parking

Date: 9/ 23/09



Commissioner's Signature

FORM FOR DISCLOSURE OF EX-PARTE COMMUNICATIONS

Name or description of the project:: Dana Point Harbor
 Time/Date of communication: 9/22/09, 1pm
 Location of communication: 22350 Carbon Mesa Rd, Malibu
 Person(s) initiating communication: Jim Montrella
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Date: 9/ 23/09



Commissioner's Signature

OCT 5 - 2009

CALIFORNIA
COASTAL COMMISSION

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Name or description of the project: Dana Point Harbor

Time/Date of communication: 8/30/09

Location of communication: Dana Point Harbor

Person(s) initiating communication: Jim Montrella

Person(s) receiving communication: Sara Wan

Type of communication: meeting

Jim took me around the harbor to show me the harbor.

1. Went to the shipyard-said really needs to be larger particularly if there will be more larger boats.
The current footprint of the operational area and parking lot (1.6 acres) for the shipyard remains the same in the proposed plan (see Shipyard Exhibit attached). The proposed marina improvement plan includes smaller slips than originally considered with a 5% reduction in slips 50' and larger. The plan also calls for fewer boats stored in the water than currently exist today. This will potentially reduce the number of boats requiring regular bottom painting.
2. Showed me the heron trees-ran into Brad from the Dana Point Harbor. He said there were 47 active nests in the trees. Jim asked about the trees that had been cut down on the island. He said that those were cut down because they were old and dying however when we went to the area it was clear that there were other reasons why they had been cut down.
A recent evaluation identified 47 "potential nest structures" in the tall eucalyptus trees at the end of Puerto Place, adjacent to the shipyard and fuel dock. All proposed construction in the area has since been eliminated from future revitalization plans and other protections have been included such as construction noise controls. Trees will only be trimmed for safety and liability issues per a new tree trimming policy approved by the Commission.
3. The public parking lot on the east side had no public parking available- all of the spaces were taken.
Public parking in this area serves the commercial buildings and is the most heavily used. There is no differentiation between the users and visitors who can park in these spaces so usage is permitted to all who seek waterfront access. The LCP allows the construction of a parking deck which will provide 400 additional parking spaces to be used by the general public including: recreational users, visitors, boaters, etc. It should also be noted that while many public parking areas are at or near capacity at peak times, boater parking lots typically have many open spaces as seen in the attached photos taken Sunday August 30th, 2009 between 11:00 am and 12:30 pm.

4. There was a lot with some spaces, but that was for employees and the Dana Sport Fishing business. Apparently it had once been for boaters and the public but it had been converted. This was by boat ramp.

Free public parking in the commercial core area of the harbor is limited to 4-hours to insure availability for visitors who will not be staying all day or overnight. Recreational fishermen who utilize low cost boating and fishing opportunities available in the Harbor at times require longer periods for parking. The lot referred to above does not have a 4-hour limit. The lot is gate controlled in the morning hours to allow sportfishing passengers, who require more than 4-hour parking, to enter the lot. Around 12 noon, the gate is lifted and the lot is available to all harbor users, until the next morning when the gate is lowered again.

5. Parking lot immediately adjacent to ramp was full but it did have some cars without trailers in it. Jim said that they sometimes used it for the business nearby who gave people passes to use it and it was sometimes used for valet parking.

The launch ramp parking area does have some pay to park auto-only parking spaces for guests of boat launch customers and/or additional family members, as well as surface boat storage customers. This lot is intended to meet a variety of parking demands and is managed by the operator of the launch ramp in order to maximize the public access and insure that the users are either appropriate to the area or are directed to other parking in the harbor. The operator of the launch ramp, Embarcadero Marina, is also required to park their employees in this area, when on busy weekends, these employees assist in the parking management for launch users.

6. The boat ramp parking is convenient but the parking spaces probably need to be wider than they are.

The current design guideline for vehicle with trailer spaces is 10' x 40'. Less than 10% of the existing spaces today meet this criteria. More than 95% of the spaces in the proposed plan meet the design guideline criteria. The 10' x 40' size guideline is based on the State of California Department of Boating and Waterways Layout and Design Guidelines for Marina Berthing Facilities, July 2005.

7. The new parking lot for trailers will be over 1000 feet away and require over a mile and a half drive to get to since there is no direct road to it.

The parking lot for vehicles with trailers using the launch ramp is located directly adjacent to the launch ramp.

This question may be referring to the off-site marine services proposal by the Boaters Association and the South Coast Water District (SCWD) - The a 1 1/2 mile distance may refer to a proposal by the Boaters Association and the South Coast Water District to use vacant property owned by SCWD located outside of the Harbor as a complement to what can be accomplished within the harbor, but OC Dana Point Harbor has no involvement in the off-site proposal. The Department is focused on the solutions available within the area under the control of OC Dana Point Harbor and the subject to the LCPA currently under consideration. (see LCPA boundary exhibit).

8. The other area being suggested on water dept land is over 1.8 miles away with no way to get back to the ramp.

The Department is focused on solutions within our control, this is not within our jurisdictional boundary and is not a project proposed with this LCPA application (see LCPA boundary exhibit).

9. Area of dedicated boater (slips) parking – east cove – now has a guard gate- should be open to the public but it is not.

This is shared use boater parking, including: slip renters with access cards, up to 120 boaters who are utilizing lower cost boating opportunities (Catalina Express passengers), and employees of the Boater Service Buildings located in this lot such as Yacht Brokers and the Marina Management Company.

10. Dock A- Long dock originally with fingers and small boats-don't know when this was converted or if it received a CDP or how the numbers are being counted-existing big boats or original small slips

In this particular case, these docks were modified during a period of high vacancies in the early 1990's when the East Marina was still operated under a long-term lease. Even after the conversion of these docks, the East Basin alone, still had a vacancy rate of over 150 slips 25' and under. Changes may have been made in the Harbor under previous management but such informal agreements are now being precluded by the regulations in the proposed LCPA, allowing for a clear and open review process for changes in the marinas. Upon certification of the LCP, the Harbor Department will commence the preparation of a CDP to obtain CCC approval to upgrade the marina with an open process to involve boaters in the decision-making.

11. A lot of end ties- again how are they being counted- as small or large boats

Most marina managers utilize end ties in a variety of ways to help address the volatility of boater demand, so there are both small boats and mid-size boats utilizing the end-ties. Individual boat owners are permitted to rent two slips at one time, if they happen to be next to each other on an end tie, two smaller boats or a larger boat can be docked in those end ties. For the current slip count of 2409, OC Dana Point Harbor counted each slip in the Harbor as identified by the marina operators. Actual boat count may vary for this reason.

12. Baby beach- very polluted

In the Heal the Bay – Beach Report for the summer of 2009, Baby Beach received all A+ grades, with the exception of one A (see the attached report card). In the 2008/2009 report card, OC Dana Point Harbor received all A's and B's for water quality at Baby Beach. The guest docks, adjacent to Baby Beach, received a highly coveted "Honor Roll" distinction. Water quality is taken extremely seriously in Dana Point Harbor and every effort is made to protect the waters of the Harbor. The revitalization plan will make a number of additional water quality related infrastructure improvements possible in Dana Point Harbor.

Doheny State Beach is located in the City of Dana Point, just south of Dana Point Harbor. Due to it's proximity to the outfall of San Juan Creek, the water quality at Doheny State Beach is sometimes a problem. Doheny State Beach is not located within Dana Point Harbor. Under the management of State Parks, there are a number of efforts underway to address the water quality at the State Beach. It is common for someone to confuse the problems at "Dana Point - Doheny State Beach" with "Dana Point - Baby Beach" simply because the names are so similar.

13. **Concerned about impact of any high rise on the wind and sailing**
The height of the visitor serving buildings proposed next to the bulkhead do not exceed 60 feet and they are located more than 1,000 feet away from the navigable channel. The tallest building in our proposed plan is 65 feet (dry stack boat storage building) and is located more than 1,750 feet away from the navigable channel, where sailing would take place. The proposed buildings will have no impact on wind and sailing due to their proposed height, location and alignment to the prevailing winds in the area. Prevailing winds blow from west to the east and the alignment of the building follows this west/east wind pattern along with the building itself being placed in the far east end of the Harbor.
14. **Concerned about the loss of slips and particularly on the loss of small slips**
The June 2009 Coastal Commission Staff report recommended a loss of slips not to exceed 477 slips. Since that time, OC Dana Point Harbor conducted three additional Boater Focus Group (BFG) meeting to build a consensus on the loss of slips. More than 20 design alternatives were reviewed by the BFG, and the group narrowed the alternatives down to four. Those four design alternatives were then the focus of an on-line survey which was made available to all slip renters and those on slip waitlists. More than 600 boaters participated in the survey and the majority selected Alternative 3.50 as a reasonable and acceptable conceptual design based on current boats in the Harbor, slip demand, waitlists, vacancies, community needs and expectations. Alternative 3.50 includes a slip loss of 209, with no increases in slips 50' and larger.
15. **Discussed vacancy rate- recently renters were told they could only rent on a temporary basis making the slips less desirable – used to be a long waiting time- years for a slip including small slips**
In an effort to prepare for the modifications to the marina a slip turnover policy was implemented in June 2007. The policy states that slips are rented on a temporary basis and that boaters accepting a temporary slip will be asked to relinquish their slip at some point during the marina improvement project construction. Current slip renters were also informed that if they gave up their slip, they could only return as temporary slip renters. This policy allows all boaters to maintain their position on the waitlist regardless of whether they accept a temporary slip or not. Prior to instituting this policy, approximately 400 of the Harbor's 2,409 slips would turn over each year. With the slip turnover policy, boaters have continued to vacate their slips at the same rate, even with the understanding they would not be able to come back as a permanent slip renter. Turnover of the slips has been documented with the Coastal Staff through numerous tables and charts, and show that since 2005 (beginning of record keeping) turnover in the 25' and under slips is consistently occurring during the fall and winter months.
16. **Looked at west basin-totally full**
As of 9-15-09 there were 76 vacancies in the Harbor, 36 vacancies in the West Basin and 40 vacancies in the East Basin.
17. **East basin- 25' slips were all full but most had several feet of overhang- still under 30'**
The East Basin has 40 vacancies, of which 38 are 25' or less.

The attached graphic identifies the boats in the harbor which overhang their slips by 3' or less, as well as those that overhang their slips by more than 3'.

18. 20' slips- there were some slips that could be vacant- hard to tell because they could be out-but there were still only 1-2 for each finger- not many

As of 9-15-09 there were 76 vacancies in the Harbor, 36 vacancies in the West Basin and 40 vacancies in the East Basin.

- 5 - 20' slips
- 19 - 22' slips
- 7 - 24' slips
- 36 - 25' slips
- 5 - 26' slips
- 2 - 30' slips
- 1 - 35' slip
- 1 - 40' slip

19. Most of the boats in the smaller slips were sail boats

The Harbor has 1,795 slips which are 30' or less. 793 (44%) of those slips are currently occupied by sailboats. Overall, Dana Point Harbor averages about a 50/50 split of power vs. sailboats, but in the smaller size slips (30' & under), the percent of sailboats is lower.

20. Looked at the linear park on west side- no public parking for these Parks, multiple small areas- on east side-totally full of people- no space left- there for public parking for this area but all full

It is unclear where the area discussed is located. On the cove side, street parking, as well as parking at Baby Beach, Pier Lot and Cove Road Lot, is available to the public. These lots total 384 parking spaces. On the island, public parking is available adjacent to the linear park along Dana Drive and at both ends. These lots total 249 parking spaces.

21. Ocean Institute- told there is public parking but there are no signs indicating that Public parking near the Ocean Institute is available in the Pier lot and Cove Road lot. Parking in the Ocean Institute lot is also open to the public.

22. Walkways around outside by street on east side should be widened

It is unclear which area this is. This could be considered as a future project.

Date: 8/31/09

Commissioner's Signature

Boat Storage Area

This 1 acre boat storage area will remain boat storage but under the operation of OC Dana Point Harbor.

The fence line shown in red will be removed and relocated to the area shown in green. Allowing the shipyard operation to remain on the same 1.6 acre site.

Current & Proposed Shipyard Operation

- 1.2 acres shipyard, jet ski / kayak sales / rentals
- 0.4 acres parking
- Total = 1.6 Acres

Parking Lot
.4 Acres*

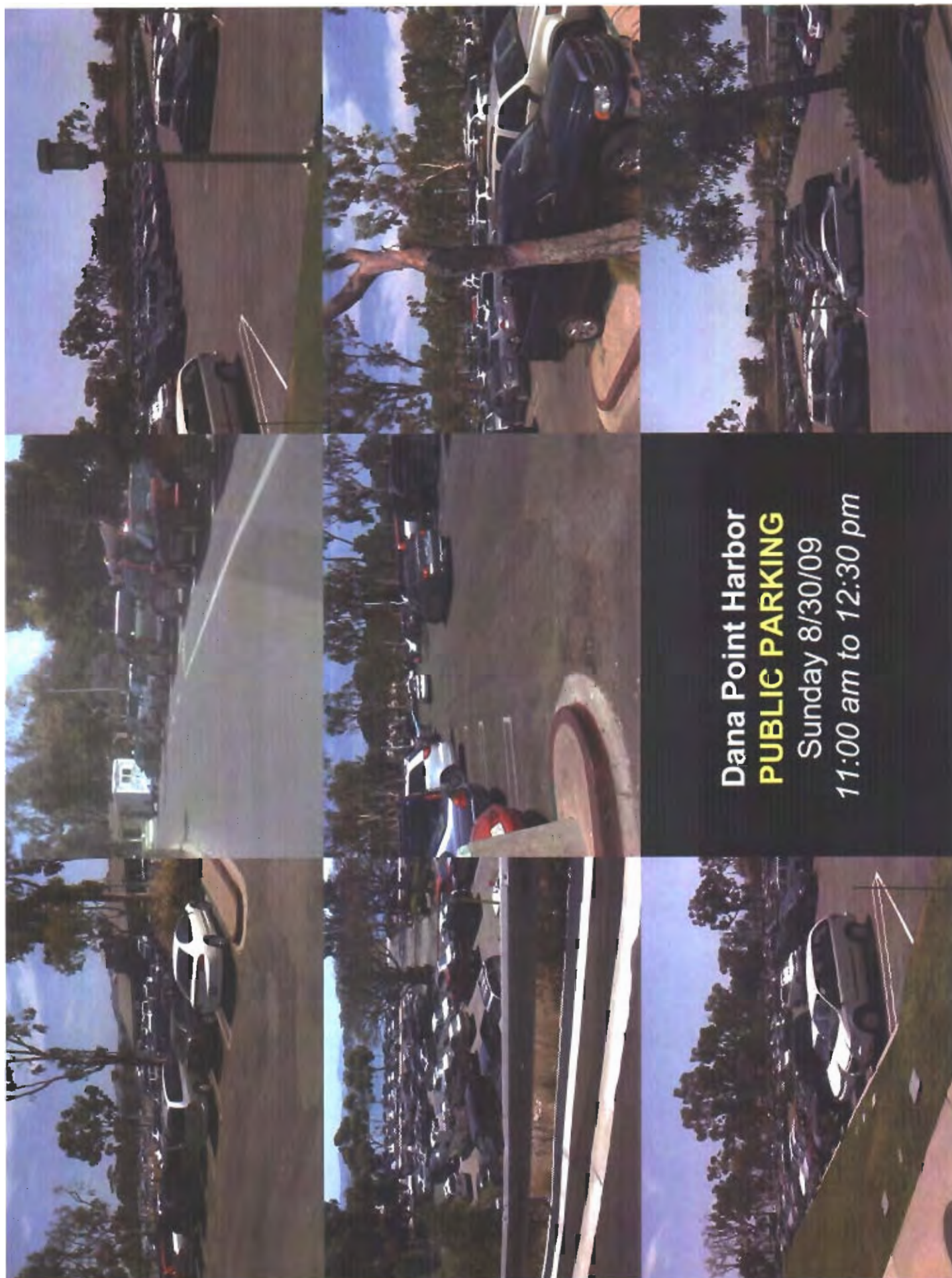
Shipyard
& Jet Ski /
Kayak Sales
& Rentals
1.2 Acres*

Policy 4.2.2-9

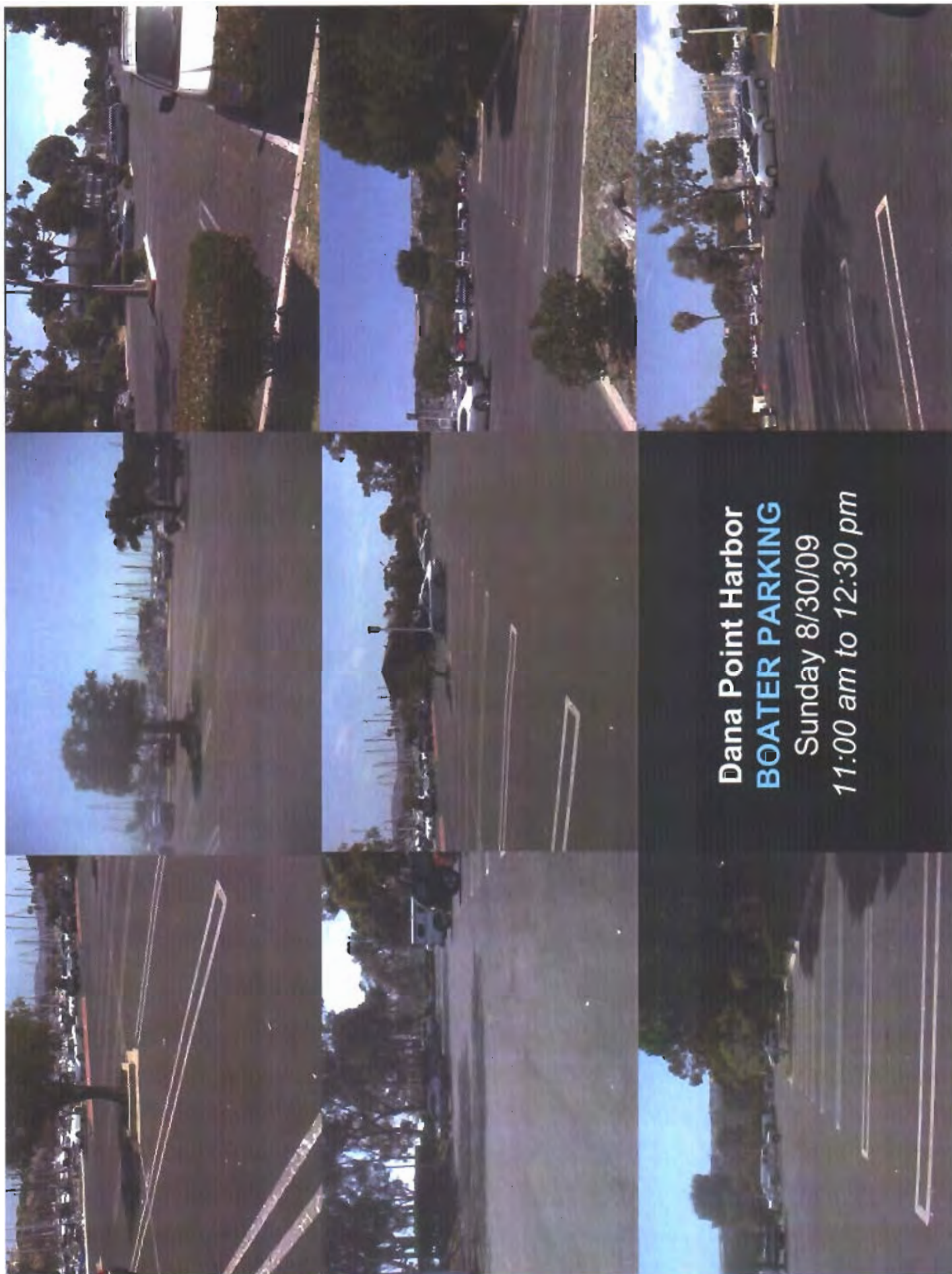
A Shipyard shall be maintained at no less than 1.6 acres in size.

Current & Proposed Shipyard Operation - 1.6 Acres*

* Acreages are approximate



Dana Point Harbor
PUBLIC PARKING
Sunday 8/30/09
11:00 am to 12:30 pm

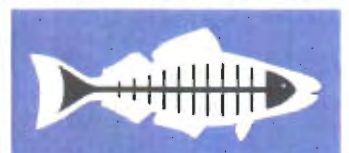




Located in the City of Dana Point
Operated by the County of Orange, OC Dana Point Harbor Department

HEAL THE BAY

BEACH REPORT CARD



2008-2009
19TH ANNUAL REPORT



Orange County	AB411 (April – Oct.)	Dry Year-round	Wet Year-round
4000' south of SERRA Outfall	A	A	F
5000' south of SERRA Outfall	A	B	F
7500' south Outfall - Projection of Camino Estrella	A	B	D
10000' south of SERRA Outfall, #5505 Beach Road	A	A	D
14000' south of SERRA Outfall, San Clemente Poche Beach	F	F	F
20000' south Outfall - San Clemente, proj. of Avenida Pico	A	A	F
San Clemente, Lifeguard Building, north of San Clemente Pier	A	A	D
San Clemente, Trafalgar Street Beach	A+	A+	B
San Clemente, Avenida Calafia	A	A	F
San Clemente, Las Palmeras	A+	A	D
Dana Point Harbor, West End - Baby Beach	A	A	C
Dana Point Harbor, Buoy Line - Baby Beach	A	A	B
Dana Point Harbor, Swim Area - Baby Beach	A	A	B
Dana Point Harbor, East End - Baby Beach	A	A	B
Dana Point Harbor, Guest Dock - End (West Basin)	A+	A+	B
Dana Point Harbor, Youth Dock	A	A	B

Los Angeles County	AB411 (April – Oct.)	Dry Year-round	Wet Year-round
Leo Carrillo Beach at Arroyo Sequit Creek mouth	A	A	B
Nicholas Beach at San Nicholas Canyon Creek mouth	A	A	B
El Pescador State Beach, between Lachusa and Los Aliso creeks	A+	A+	A+
Encinal Canyon at El Matador State Beach	A+	A+	A+
Broad Beach at Trancas Creek mouth	A	A	F
Zuma Beach at Zuma Creek mouth	A+	A+	D
Walnut Creek, projection of Wildlife Rd. (private)	A+	A	F
Paradise Cove Pier at Ramirez Canyon Creek mouth	F	F	D
Escondido Creek, just east of Escondido State Beach	F	F	C
Latigo Canyon Creek mouth	B	B	D
Solstice Canyon at Dan Blocker County Beach	F	F	D
Puerco State Beach at creek mouth	B	B	C

WEST BASIN

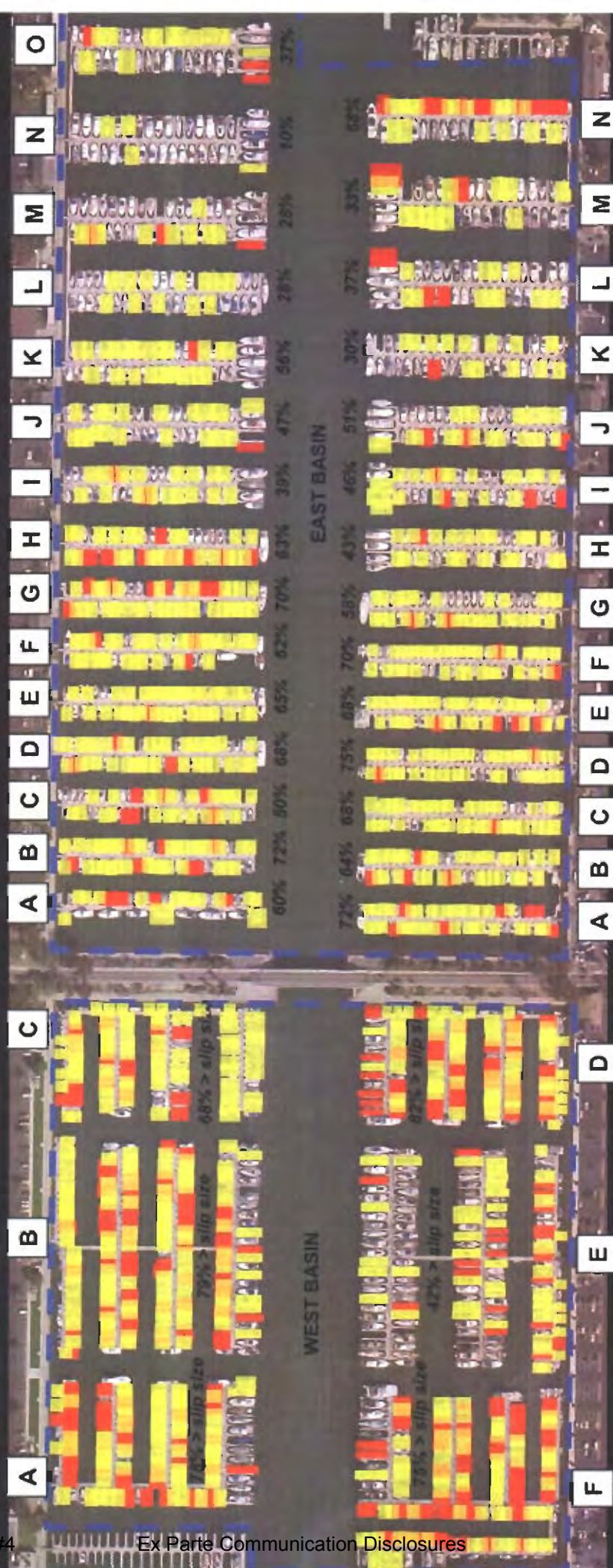
Total Boats = 980

Boats Larger than their Slip Size = 698 (71%)

EAST BASIN

Total Boats = 1,439

Boats Larger than their Slip Size = 784 (54%)



Dana Point Harbor Boats Larger than their Slip West & East Basins Combined

Total Boats = 2419

Boats Larger than their Slip Size = 1482 (61%)

**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.)

9/29/09 - 3:53 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.)

via e-mail

Person(s) initiating communication:

Bruce Heyman, Boaters for Dana Point Harbor

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: September 30, 2009


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 proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Tuesday, September 29, 2009 4:02 PM
To: Hampton, Nancy
Subject: FW: Dana Point Harbor LCPA Hearing - Oceanside - Logistics

An you do an exparte on this? Thanks.

-----Original Message-----

From: Bruce Heyman [mailto:bruceheyman@cox.net]
Sent: Tuesday, September 29, 2009 3:53 PM
To: Neely, Bonnie
Cc: bruceheyman@cox.net
Subject: Dana Point Harbor LCPA Hearing - Oceanside - Logistics

Dear Chairwoman Neely,

As the lead organizer of Boaters for Dana Point Harbor, I would respectfully request that we be afforded the same amount of time as the Dana Point LCPA applicants. While we hope for the LUP ultimately to be approved, the Commission should only do so if the amendments that have been approved and added by the CCC Staff remain and if additional amendments are added to protect recreational boating. Until such time, we are clearly the organized opposition, as demonstrated by the over 700 signed petitions (Exhibit 32) asking for us to represent boaters on these matters.

Two or three of the leaders of the organization will utilize this time to clearly and concisely point out where issues remain and how they could be easily rectified by the Commission. In addition, we are performing public outreach to all our signatories and supporters to try to coordinate their presentations to make the most efficient use of the Commission's time next Thursday. Specifically, we are trying to organize everyone's points so that the Commission will not be subjected to off-topic issues and needless repetition.

I would be happy answer any questions you have by phone (949 289-8400), by fax (949 489-8352), or by email (bruceheyman@cox.net) and would appreciate feedback on this request so that I can most adequately prepare our team.

Respectfully,

Bruce Heyman
Lead Organizer
Boaters for Dana Point Harbor
www.boaters4DPH.com
bruceheyman@cox.net
949 289-8400

00000000

**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.)

10/01/09 - 1:25 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.)

via e-mail

Person(s) initiating communication:

J. Thomas Stallings, Boaters 4 Dana Point

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: September 30, 2009



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.

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Thursday, October 01, 2009 1:25 PM
To: Hampton, Nancy
Subject: FW: Dana Point Harbor Revitllization
Attachments: ccc.doc

Exparte..

-----Original Message-----

From: Tom Stallings [mailto:jtsil@yahoo.com]
Sent: Thursday, October 01, 2009 12:26 PM
To: Neely, Bonnie; thenry@coastal.ca.gov; kshwing@coastal.ca.gov; fsy@coastal.ca.gov
Subject: Dana Point Harbor Revitllization

Please open and read my attached letter.

Thank You.

J. Thomas Stallings
Boaters 4 Dana Point

10/2/2009

September 30, 2009

Bonnie Neely
Teresa Henry
Karl Schwing
Fennie Sy

RE: Dana Point Harbor Revitalization

I am a Dana Point resident, a boater, and a patron of the commercial businesses in the Dana Point Harbor. I am sure you are tired of all the letters and emails concerning the upcoming Dana Point Revitalization, but hope you will give me a few minutes of your time.

It upsets me to see how the Orange County Government is working for some of the people, not all of the people. They have selected to align themselves with the Merchants in the Harbor overlooking the thousands of boats that reside there. Collectively, they call themselves Dana Point Harbor NOW. They have used the resources of the County (email list, monthly marina billings, postings in the harbor) to get their message out while refusing the opposition the same opportunities. I thought the government was supposed to be fair!

I seriously doubt you will find anyone that is totally against the Revitalization as all parties agree it is needed. The conflict comes from the landside (the county and the merchants) doing all the taking and the waterside (boaters) doing all the giving.

The landside is not giving up anything, but gaining everything. The boaters are giving up slips, boater parking, trailer boating parking, boat dry/mast up storage, and one acre of our shipyard, while not gaining anything. This hardly seems equitable or fair to me. How about you?

First, and foremost, the Dana Point Harbor is a harbor! Shops, restaurants, and hotels can be built anywhere, where as a harbor can not. Secondly, in this time of economic tough times, all of us need to live within our means. Said another way, we should pay our own way. Not depend on others to finance it for us or take from others.

If the Merchants want to upgrade their shops, so be it - but at their expense within their existing footprint. The Boaters generate enough revenue to cover the expenses related to improving the docks and supporting land areas within their footprint. This way, everyone wins!!

You will not see as many boaters at the hearing on October 8th as you will see supporters of DP Harbor NOW, but hopefully that will not stand in the way of fairness and "doing the right thing". DP Harbor NOW is providing free buses, free meals, and giving away Merchant Gift Certificates to those who agree to support their cause. Nothing like buying votes! And if that's not bad enough, 99% of the DP Harbor Now group does not have

anything at risk or at stake (there will always be a coffee shop in the harbor). The Boaters do!!!! They do not have other options.....

I trust you will let your conscious and the Tidelands Trust guide your decision at the upcoming hearing.

Thank you for your time and civic leadership!

Sincerely,

J. Thomas Stallings
Boaters 4 Dana Point

**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.)

10/01/09 -- 11:44 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.)

via e-mail

Person(s) initiating communication:

Peter Macdonald, Boat Owner

Person(s) receiving communication:

Commissioner Bonnie Neely

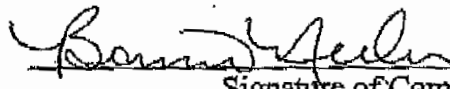
Name or description of project:

Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

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

See attached e-mail communication.

Date: September 30, 2009


Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Thursday, October 01, 2009 1:27 PM
To: Hampton, Nancy
Subject: FW: Dana Point Shipyard - proposed reduction in size.

Exparte.

-----Original Message-----

From: Peter Macdonald [mailto:peter.macdonald@cox.net]
Sent: Thursday, October 01, 2009 11:44 AM
To: fsy@coastal.ca.gov; Neely, Bonnie
Subject: Dana Point Shipyard - proposed reduction in size.

Dear Sir/Madam:

I write to you as a concerned long term boat owner and marina occupier at Dana Point.

I have regularly carried out maintenance in the Dana Point Shipyard on a DIY basis and would be significantly disadvantaged if space available to the shipyard was reduced so that there was no longer a capability for local boat owners to carry out maintenance on a do-it-yourself basis.

Please consider current and future boat owners and ensure the shipyard has at least as much space as it currently occupies (it can already be difficult to get a space booking for maintenance).

Thank you.

Peter Macdonald

18 Hermitage Lane
Laguna Niguel
CA 92677

Telephone 949 310 9296
Fax 949 488 2558

10/2/2009

**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.)

10/01/09 - 11:56 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.)

via e-mail

Person(s) initiating communication:

Richard J. Gault, The Yacht Mystery

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

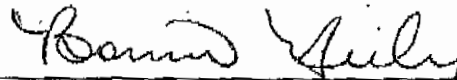
Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: September 30, 2009



Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Thursday, October 01, 2009 1:28 PM
To: Hampton, Nancy
Subject: FW: Dana Point Shipyard

Exparte.

-----Original Message-----

From: JAXON9597@aol.com [mailto:JAXON9597@aol.com]
Sent: Thursday, October 01, 2009 11:56 AM
To: Neely, Bonnie
Cc: WebMaster@danapoint-shipyard.com
Subject: Dana Point Shipyard

Hello,

I will be very brief. It is absolutely crucial that the existence, status, and future of Dana Point Shipyard not be compromised by the Dana Point Harbor revamp project. Among other considerations, the yard is essential to the safety of the South Orange County boating community.

Respectful regards,

Richard J. Gault
The yacht Mysterry
Dana Point Marina, Island slip C50

10/7/2009

**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.)

10/01/09 - 12:04 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.)

via e-mail

Person(s) initiating communication:

Hank Davis, Boat Owner at Dana Point Marina

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

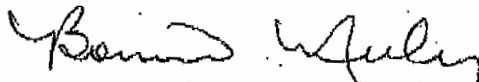
Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: September 30, 2009



Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Thursday, October 01, 2009 1:26 PM
To: Hampton, Nancy
Subject: FW: Dana Point Revitalization

Exparte.

-----Original Message-----

From: Hank Davis [mailto:hhdavisj@cox.net]
Sent: Thursday, October 01, 2009 12:04 PM
To: fsy@coastal.ca.gov; Neely, Bonnie
Cc: 'Dana Point Shipyard'; cap10paul@aol.com; Peter Bartholomew
Subject: Dana Point Revitalization

Dear Mr Fernle and Ms Neely,

I am a current boat owner and have operated my sail boat out of Dana Point Marina for the last three years. Dana Point harbor is the best I have seen in my over 50 years of Navy and recreational sailing experience.

I have tracked the ongoing debate regarding the future of Dana Point Revitalization plan and I am very concerned by political and business pressures being brought to bear on the California Coastal Commission that are not in the best interests of the harbor.

While the harbor does require some modernization of it's facilities in the future, it appears to me that a number of businesses, investors and Orange County politicians are using this revitalization effort to serve their "conflict of interest" desires to increase commercial tax base and investor profitability rather than to meet the needs of the majority of boat owners. In particular, they are making moves to reduce or remove a very significant service provided by the Dana Point Shipyard and to reduce significantly the number of slips available to affordable recreational boats.

For those of us who sail the coast of S. California, the Dana Point shipyard is the only one available within several hours transit time should we suffer unanticipated engine or hull problems or emergencies. In addition, planned expansions of the area for boat lay up for maintenance and refit are also being pressured by the county and retail shopping associated businesses to be reduced or eliminated all together. This is not in the best interests of the boating community in Dana Point.

I solicit you to support requirements for the County to adjust their plans to serve the interests of the commercial and recreational boating community first. Specifically that plan should:

- Maintain or expand the shipyard services at Dana Point as vital to the commercial and recreational boating community.
- Design any commercial expansion plans to maintain or increase the available docking to the smaller sized and more affordable boats (those less than 28-30 feet in length).
- Should there be a more defined growing market for docking for larger recreational boats, define a future harbor expansion outside the current breakwater to accommodate that market with commensurate return on that investment. Note: I would doubt that such a business case could be made given the current state of the economy and the very poor record state and county governments have shown in managing their essential community services within current and projected tax and bond resources.

I appreciate your support of these requirements.

Regards

Hank Davis
hhdavisj@cox.net
714-403-7305
SV Sunset, Dana Island East D-53.

10/2/2009

**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.)

10/01/09 - 125 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.)

via e-mail

Person(s) initiating communication:

Amy Kramer

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

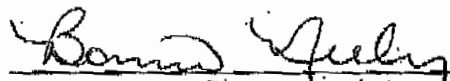
Agenda Item Th22a: Dana Point Harbor Revitalization
Plan (LUP Only) Public hearing and action on request
by City of Dana Point to amend the LCP LUP to
incorporate the proposed Dana Point Harbor
Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: September 30, 2009


Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Thursday, October 01, 2009 1:25 PM
To: Hampton, Nancy
Subject: FW: Dana Point Shipyard Revitalization

Exparte.

-----Original Message-----

From: Amy Kramer [mailto:amyckramer@gmail.com]
Sent: Thursday, October 01, 2009 12:54 PM
To: Neely, Bonnie
Subject: Dana Point Shipyard Revitalization

Madam Chair Bonnie Neely,

I am writing you today to let you know that I think this Dana Point Shipyard Revitalization, taking away Dana Point Shipyard's land is a bad idea. They have been a full service Shipyard for years. They have put their hard work, time and hearts into making the Shipyard the best it can be. Taking away an acre of their land and everything else being done is going to put a big halt to business, they will loose customers and their good name. Do you know who the Harbor Patrol calls day or night when there is an Emergency with a boat? Dana Point Shipyard. What are they going to do know if you go on with this? There is no other place to do emergency haul outs in the harbor except for Dana Point Shipyard. They are honest, caring and hard workers that want to keep growing with their business. They are concerned about their customers and giving them the best. I hope you take a second thought about what you are doing here, and how many lives this will affect.
Thank you for your time, Amy Kramer

10/2/2009

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication:

10/02/09 - 11:22 p.m.

(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.)

Location of communication:

via e-mail

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

Person(s) initiating communication:

Marc Maury, Chairman of the Board, Maury Microwave Corporation

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:


Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) - Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: October 2, 2009


Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Friday, October 02, 2009 2:04 PM
To: Hampton, Nancy
Subject: FW: Dana Point Harbor

exparte

-----Original Message-----

From: Marc Maury [mailto:marcm@maurymw.com]
Sent: Friday, October 02, 2009 11:22 AM
To: Neely, Bonnie; Ferni Sy; Ken Schwing; Teresa Henry
Cc: Ted Olsen; Bruce Heyman; Dana Point Shipyard
Subject: Dana Point Harbor

Dear Coastal Zoning Commission Members,

My Name is Marc Maury and we have kept a slip in DP since 1975, I believe we are 19th or 20th oldest slip renter in the harbor. We have nothing to gain or lose regardless of what decision you make going forward however I felt I should voice my opinion.

For my money DP Harbor is the most beautiful small boat harbor on the west coast and it's certainly the most user friendly if you are a boater. We are out on the open ocean in a short period of time and the facilities are very convenient and in most cases adequate. I believe that was the intention of the people who originally designed and approved this very functional harbor.

Now I have to ask myself why are going to tear down and reconstruct this place and what are we gaining? Also I am reminded that the primary intention to have a harbor is to make a place for boaters to keep their boats and that is what attracts people here in the first place and provides an opportunity for businesses to service the general public and the county to reap the income from slip rentals and tax revenues.

The existing buildings appear to be structurally sound, parking appears to be adequate, The parking convenience to the slip renters is very good and should not be sacrificed, [for older people increasing the distance they have to walk and carry things to their boats is not desirable], bathrooms are adequate but need updating and remodeling, as do most of the buildings, Maintenance could be improved, re-paving of the parking lots needs to be done.

We have fine restaurants easily accessible to visitors as well as slip renters. We have a good boat yard that has serviced our needs adequately and a fuel dock that charges the highest prices on the west coast, [with the exception of Catalina which is understandable].

There is no question everything in the harbor needs some degree of updating but wouldn't this be a more cost effective solution rather than tearing buildings down and starting from scratch? Does the gain outweigh the cost and displacement of businesses, slip renters and visitors alike?

It's difficult for me to understand why in the middle of a terrible recession this plan is even being considered. My suggestion is we minimize reconstruction and opt for re-modeling of structures, facilities and Slip re-alignment to better meet current needs and start thinking about building a new marina down the coast between DP Harbor and Oceanside Harbor.

I think we would get more bang for our bucks this way and do a better job of addressing the needs of boaters, the boating industry and the public at large.

Thank you for your kind consideration.

Marc Maury
Chairman of the Board
Maury Microwave Corporation

10/2/2009

**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.)

10/5/09 - 8:13 a.m.

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

via e-mail

Person(s) initiating communication:

Gary Peck, Laguna Niguel Resident

Person(s) receiving communication:

Commissioner Bonnie Neely


Name or description of project:

Agenda Item Th22a: Dana Point Harbor Revitalization Plan (LUP Only) Public hearing and action on request by City of Dana Point to amend the LCP LUP to incorporate the proposed Dana Point Harbor Revitalization Plan.

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

See attached e-mail communication.

Date: October 6, 2009



Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Monday, October 05, 2009 9:53 AM
To: Hampton, Nancy
Subject: FW: Dana Point Shipyard

Exparte.

-----Original Message-----

From: Gary Peck [mailto:gary.peck@cox.net]
Sent: Monday, October 05, 2009 8:13 AM
To: Neely, Bonnie
Subject: Dana Point Shipyard

Dear Ms. Neely:

I have been a boater at Dana Point Marina for 15 years, either as slip renter or dry-land storage at Embarcadero, for that period. I have always thought that Dana Point Marina was a unique and beautiful harbor, and true to the original character of the area. It is large enough to accommodate a large number of smaller and mid-size boats, and does not (yet) suffer from crass over-commercialization as the marinas in the north do. We are lucky to have it. Accordingly, I generally do not favor the changes proposed Revitalization Plan for the marina, just to provide it with more parking places for cars, large boats and "Fish 'n Chips" spots.

In particular, I strongly believe the County's proposal to downsize the Dana Point Shipyard's size and services provided is a grave disservice to the boaters at Dana Point. Of particular concern is the proposal's elimination of an engine crane and DIY area. What am I supposed to do if I need to some serious work on my engine that requires removal? Or want to work on it myself (or call in another boat repair company) to save some money? Under this proposal, I will be forced to have the boat towed 15 miles to Newport and pay the exorbitant prices of the shipyards there. This is really unacceptable to me as a boater, resident of the area, and local taxpayer. Please keep these views in mind when making your final decision on this matter - I think they are representative of the majority of the boaters and constituents of the area.

Gary Peck
59 Westgate
Laguna Niguel, CA

East Basin slip # I-39

10/5/2009

**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.)

10/05/09 - 3:53 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.)

via e-mail

Person(s) initiating communication:

Tom Nulty, Jr., Dana West Marina

Person(s) receiving communication:

Commissioner Bonnie Neely


Name or description of project:

Agenda Item Th22a: Dana Point Harbor Revitalization
Plan (LUP Only) Public hearing and action on request
by City of Dana Point to amend the LCP LUP to
incorporate the proposed Dana Point Harbor
Revitalization Plan.

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

See attached e-mail communication.

Date: September 30, 2009


Signature of Commissioner

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Coastal Commission Fax: 415 904-5400

Hampton, Nancy

From: Neely, Bonnie
Sent: Monday, October 05, 2009 5:40 PM
To: Hampton, Nancy
Subject: FW: Oceanside CCC meeting
Attachments: DP_LUP_Ch.doc

exparte

-----Original Message-----

From: Nulty Jr Tom [mailto:tnultyjr@yahoo.com]
Sent: Monday, October 05, 2009 2:25 PM
To: Neely, Bonnie
Subject: Oceanside CCC meeting

Dear Madam Chair-

Unfortunately, due to work constraints, I am unable to attend your Coastal Commission hearing scheduled for October 8th in Oceanside. That being the case, I would still like to voice my opinion regarding the LUP (LCPA) to be discussed regarding Dana Point Harbor.

The plan as presented to the Coastal Commission for review represents a complete remake of Dana Point Harbor, not the simple, overdue, required rehabilitation it is painted as being, and is completely inconsistent with the original intent and ongoing needs of the southern California boating public the harbor was created to service.

In addition to numerous other failings in this plan (loss of affordable slips, loss of boat storage, etc.), the plan, as envisioned by the OCDPH and the Board of Supervisors, calls for the loss of substantial dedicated boater parking, and moving a considerable portion well away from the harbor edge. Perhaps most unsettling of all is the thought of the significant loss of footprint at the local full service shipyard/boat works, requiring the need to have my boat serviced more than 20 miles away in Newport Beach.

This plan is quite simply a vision of overbuilding and gross over commercialization, and would completely change the nature of Dana Point from a small harbor with a nominal commercial area adjacent, to that of a sprawling commercial complex with a redundant (and less affordable!) small harbor adjacent as an historical afterthought.

With regards to the overwhelming negative impact on the quality of the harbor, and the truly disingenuous nature of this plan, I am compelled to call upon you and the fellow Commission members to disapprove of the plan as currently presented.

Thank you for your concern in this important matter before you.

Tom Nulty, Jr.
Dana West Marina

10/6/2009

**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.)

10/05/09 - 3:33 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.)

via e-mail

Person(s) initiating communication:

Dana Point Boaters Association Officers, Directors and
Advisors: Jim Dahl, David Drenick, Ray Ergas,
Steven Alan Fry, Bruce Heyman, Diane Heyman,
Mike Isaacson, Barbara Merriman, Ted Olsen, and
Tom Stallings

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

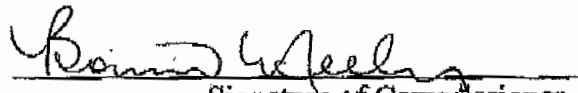
Agenda Item Th22a: Dana Point Harbor Revitalization
Plan (LUP Only) - Public hearing and action on
request by City of Dana Point to amend the LCP LUP
to incorporate the proposed Dana Point Harbor
Revitalization Plan.

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

See attached e-mail communication.

Date: October 5, 2009


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 proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Hampton, Nancy

From: Neely, Bonnie
Sent: Monday, October 05, 2009 3:53 PM
To: Hampton, Nancy
Subject: FW: DPBA Former Directors, Officers and Advisors for Dana Point Harbor

exparte

-----Original Message-----

From: Bruce Heyman [mailto:bruceheyman@cox.net]
Sent: Monday, October 05, 2009 3:33 PM
To: Neely, Bonnie; 'Fernie Sy'
Cc: 'Bruce Heyman'; dpbfg@yahooogroups.com
Subject: DPBA Former Directors, Officers and Advisors for Dana Point Harbor

Subject: DPBA Former Directors, Officers and Advisors for Dana Point Harbor
The former Dana Point Boaters Association Officers, Directors, and Advisors listed below are respectfully asking the California Coastal Commission to amend the proposed LUP to insure that, at a minimum, the recreational boating resources currently present in the Harbor are preserved in the new plan for the Harbor. These resources should be increased and enhanced, as described in Chapter 3 of the California Coastal Act, wherever possible.

Signatories:

Jim Dahl, Past Advisor (Current Mayor Pro Tem San Clemente and Past Mayor of San Clemente)
David Drenick, Past Director
Ray Ergas, Past Director
Steven Alan Fry, Past Director
Bruce Heyman, Past Director, Past Founding President
Diane Heyman, Past Director, Past Chairperson of Government Affairs
Mike Isaacson, Past Director, Past Advisor
Barbara Merriman, Past Advisor
Ted Olsen, Founding Vice President, Past President, Past DPBA Store Chairman
Tom Stallings, Past Director, Past Vice President

10/5/2009

9/11/09

DANA POINT HARBOR VACANCIES - May 2000 to August 2009

Slip Size	20	21	22	24	25	26	28	30	31	34	35	36	40	45	50	53	55	60	TOTAL
Existing Slip Count	36	7	107	100	801	233	123	388	1	2	266	4	129	107	44	13	33	15	2409

2000

Empty Slips - May 2000	44																		44
Empty Slips - June 2000	22																		22
Empty Slips - July 2000	32																		32
Empty Slips - Aug 2000	33																		33
Empty Slips - Sep 2000	23																		23
Empty Slips - Oct 2000	72																		72
Empty Slips - Nov 2000	68																		68
Empty Slips - Dec 2000	98																		98

2001

Empty Slips - Jan 2001	105																		105
Empty Slips - Feb 2001	100																		100
Empty Slips - Mar 2001	75																		75
Empty Slips - Apr 2001	33																		33
Empty Slips - May 2001	30																		30
Empty Slips - June 2001	29																		29
Empty Slips - July 2001	10																		10
Empty Slips - Aug 2001	20																		20
Empty Slips - Sep 2001	29																		29
Empty Slips - Oct 2001	37																		37
Empty Slips - Nov 2001	41																		41
Empty Slips - Dec 2001	74																		74

2002

Empty Slips - Jan 2002	50																		50
Empty Slips - Feb 2002	56																		56
Empty Slips - Mar 2002	65																		65
Empty Slips - Apr 2002	30																		30
Empty Slips - May 2002	32																		32
Empty Slips - June 2002	14																		14
Empty Slips - July 2002	20																		20
Empty Slips - Aug 2002	10																		10
Empty Slips - Sep 2002	12																		12
Empty Slips - Oct 2002	26																		26
Empty Slips - Nov 2002	40																		40
Empty Slips - Dec 2002	64																		64

2003

Empty Slips - Jan 2003	74																		74
Empty Slips - Feb 2003	71																		71
Empty Slips - Mar 2003	55																		55
Empty Slips - Apr 2003	37																		37
Empty Slips - May 2003	15																		15
Empty Slips - June 2003	20																		20
Empty Slips - July 2003	10																		10
Empty Slips - Aug 2003	0																		0
Empty Slips - Sep 2003	0																		0
Empty Slips - Oct 2003	10																		10
Empty Slips - Nov 2003	13																		13
Empty Slips - Dec 2003	6																		6

2004

Empty Slips - Jan 2004	20																		20
Empty Slips - Feb 2004	12																		12
Empty Slips - Mar 2004	14																		14
Empty Slips - Apr 2004	13																		13
Empty Slips - May 2004	10																		10
Empty Slips - June 2004	0																		0
Empty Slips - July 2004	10																		10
Empty Slips - Aug 2004	10																		10
Empty Slips - Sep 2004	10																		10
Empty Slips - Oct 2004	20																		20
Empty Slips - Nov 2004	10																		10
Empty Slips - Dec 2004	10																		10

30' & under

31' to 39'

40' to 49'

50' & over

DP Harbor Vacancies

9/11/09

DANA POINT HARBOR VACANCIES - May 2000 to August 2009

Slip Size	20	21	22	24	25	26	28	30	31	34	35	36	40	45	50	53	55	60	TOTAL
Existing Slip Count	36	7	107	100	801	233	123	388	1	2	266	4	129	107	44	13	33	15	2409

2005

Empty Slips - Jan 2005	10																		10
Empty Slips - Feb 2005	10																		10
Empty Slips - Mar 2005	10																		10
Empty Slips - Apr 2005	20																		20
Empty Slips - May 2005	10																		10
Empty Slips - June 2005	10																		10
Empty Slips - July 2005	10																		10
Empty Slips - Aug 2005	10																		10
Empty Slips - Sep 2005	0																		0
Empty Slips - Oct 2005	10																		10
Empty Slips - Nov 2005	10																		10
Empty Slips - Dec 2005	20																		20

2006

Empty Slips - Jan 2006	20																		20
Empty Slips - Feb 2006	20																		20
Empty Slips - Mar 2006	20																		20
Empty Slips - Apr 2006	10																		10
Empty Slips - May 2006	10																		10
Empty Slips - June 2006	10																		10
Empty Slips - July 2006	10																		10
Empty Slips - Aug 2006	10																		10
Empty Slips - Sep 2006	10																		10
Empty Slips - Oct 2006	29																		29
Empty Slips - Nov 2006	10																		10
Empty Slips - Dec 2006	20																		20

2007

Empty Slips - Jan 2007	10																		10
Empty Slips - Feb 2007	10																		10
Empty Slips - Mar 2007	20																		20
Empty Slips - Apr 2007	20																		20
Empty Slips - May 2007	20																		20
Empty Slips - June 2007	10																		10
Empty Slips - July 2007	10																		10
Empty Slips - Aug 2007	10																		10
Empty Slips - Sep 2007	10																		10
Empty Slips - Oct 2007	10																		10
Empty Slips - Nov 2007	10																		10
Empty Slips - Dec 2007	22																		22

2008

Empty Slips - Jan 2008	39																		39
Empty Slips - Feb 2008	43																		43
Empty Slips - Mar 2008	49																		49
Empty Slips - Apr 2008	0																		0
Empty Slips - May 2008	0																		0
Empty Slips - June 2008	29																		29
Empty Slips - July 2008	20																		20
Empty Slips - Aug 200	20																		20
Empty Slips - Sep 2008	20																		20
Empty Slips - Oct 2008	20																		20
Empty Slips - Nov 2008	30																		30
Empty Slips - Dec 2008			18	12	22	9					2								63

2009

Empty Slips - Jan 2009			20	10	34	10													74
Empty Slips - Feb 2009	6		23	12	47	6													94
Empty Slips - Mar 2009	6		22	12	48	4				3									95
Empty Slips - Apr 2009	5	1	22	13	52	3		2											100
Empty Slips - May 2009	4	1		21	53	4	6		1										90
Empty Slips - June 2009	5		20	12	41	8		1				1	1						89
Empty Slips - July 2009	5		19	12	29	8	1			2									76
Empty Slips - Aug 2009	4		18	8	25	9				2			2	1					69

30' & under

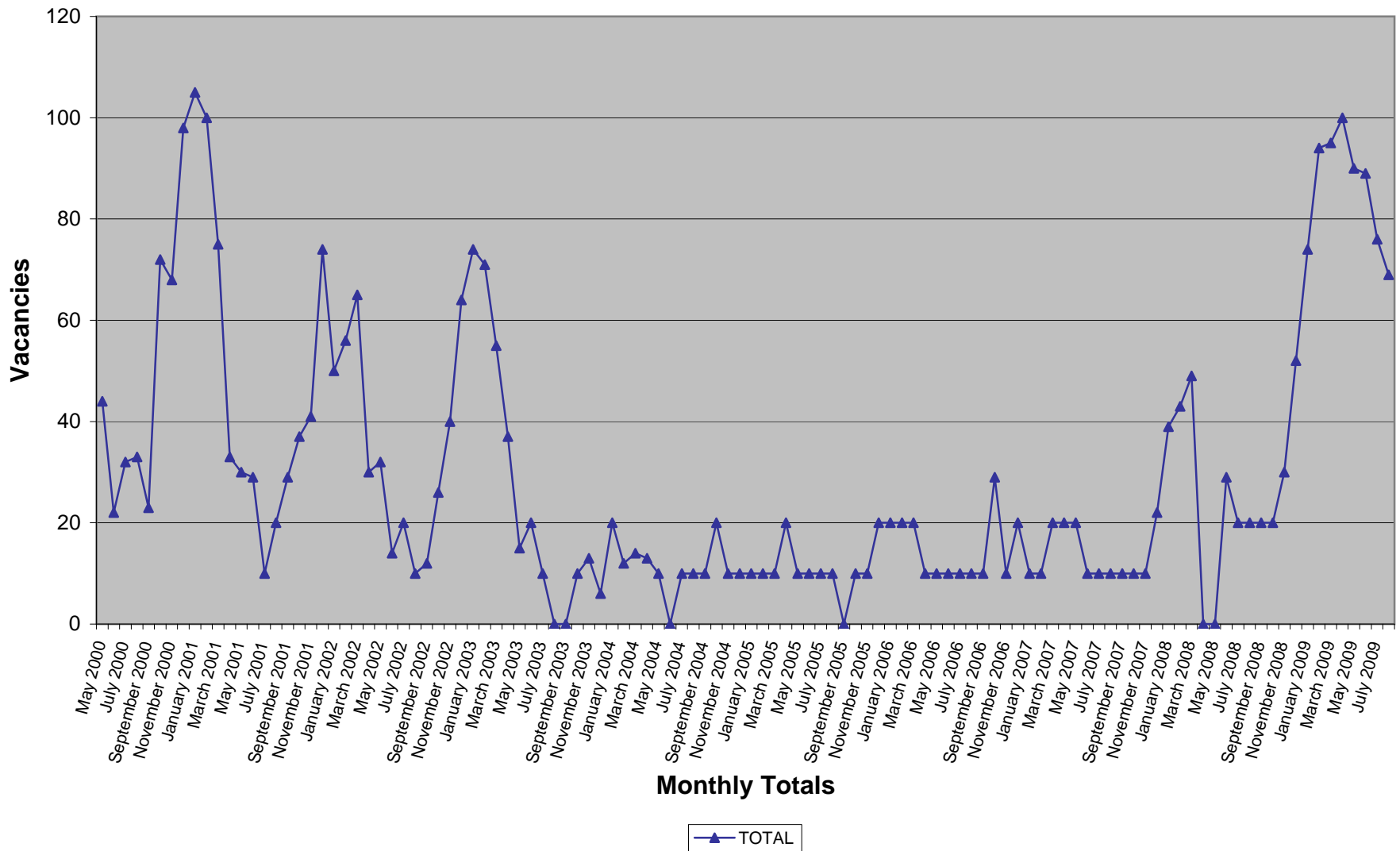
31' to 39'

40' to 49'

50' & over

DP Harbor Vacancies

DPH Boat Slip Vacancy History



DP Harbor Vacancies

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



M E M O R A N D U M

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Fernie Sy
Coastal Analyst

SUBJECT: Dana Point Harbor Heronry

DATE: June 8, 2009

Heron and egrets (wading birds) experienced severe population declines at the turn of the 20th century when they were hunted for their beautiful plumage, which was highly prized for woman's hats. Several laws outlawing hunting, including the 1918 Migratory Bird Treaty Act, were passed and heron and egret populations recovered. While heron and egret populations are no longer threatened, the wetland ecosystems upon which they depend are in trouble. The United States Geologic Survey conducted a study of wetland loss in the United States between the 1780's and 1980's. California has lost the largest percentage of original wetland habitat (91%) of all the states¹. It is now estimated that California has less than 500,000 wetland acres remaining (from an estimated 5 million in 1780). In southern California, many wetlands have been replaced by marinas and herons and egrets have adapted by relocating their roosting and nesting sites to stands of tall non-native pines, palms, ficus, and coral trees within highly developed areas^{2,3}. This relocation to non-native trees near marinas is because of the virtual absence of any native trees, the proximity of the non-native trees to foraging habitat, and the height of the non-native trees which affords protection from predation and disturbance. The herons and egrets are utilizing these trees for both roosting and nesting. In many southern California locations, herons and egrets roost at colony sites all year^{4,5}.

¹ United States Geologic Survey: <http://www.inpwrc.usgs.gov/resource/wetlands/wetloss/summary.htm>

² Report on the Marina Del Rey Heronry. 2005. Prepared for Mark D. Kelly, Senior Vice President, Lyon Capital Ventures, by Dr. Jeffery Froke.

³ Letter to California Coastal Commission from Daniel Cooper, Cooper Ecological Monitoring Inc., dated Aug 18, 2006

⁴ Butler, R. W. 1992. Great Blue Heron. In *The Birds of North America*, No. 25 (A. Poole, P. Stettenhelm, and F. Gill, Eds.). Philadelphia: The Academy of Natural Sciences; Washington, DC: The American Ornithologists Union

⁵ Parson, K. C. and T. L. Master. 2000. Snowy Egret (*Egretta thula*). In *The Birds of North America*, No. 489 (A. Poole and F. Gill, Eds.). The Birds of North America, Inc., Philadelphia, PA

Hérons and egrets establish roosting and nesting sites based on several important criteria, including proximity to foraging habitat and avoidance of predation and disturbance. For Great Blue Herons, the mean distance flown from nests to principle feeding sites is 1.4 to 4 miles⁶. An average Snowy Egret foraging trip is 1.7 miles from roosting and nesting sites to their main foraging area⁷. Herons and egrets select nest sites difficult for mammalian predators to reach and in areas distant from disturbance. In urban areas this translates into a preference for tall trees. In southern California, the average nest height for Great Egrets is 88 feet⁸. Raccoons are one of the main heron and egret nest predators in Southern California⁹. Tall trees are the main deterrent to raccoon predation. Dense foliage that provides camouflage and protection is also important in southern California as a deterrent to predation from birds such as American crows, *Corvus brachyrhynchus*, who prey on eggs and chicks, and red-tailed hawks, *Buteo jamaicensis*¹⁰. Herons and egrets are normally shy and retiring birds that are sensitive to human disturbance. The fact that they have established roosting and nesting sites in areas of high human density and disturbance suggests that suitable roosting and nesting areas are scarce.

Hérons and egrets are integral components of fully functioning wetland ecosystems. They are top predators whose foraging activities affect the density and composition of prey populations. Wetlands lacking such top predators may be subject to eutrophication events, disease outbreaks, and any number of other undesirable cycles¹¹. Southern California wetlands are experiencing pressure from a number of fronts including loss of native species, loss of area due to development, invasive species, and pollution. Herons and egrets are critical members of wetland ecosystems and their roosting and nesting colonies provide very important ecosystem functions.

Tree stands suitable for wading bird roosting and nesting that are within close proximity to major wetland complexes are uncommon in southern California. This situation led to an Environmentally Sensitive Habitat Area (ESHA) determination for tree stands serving as heronries in Marina del Rey. The analysis of whether a heronry should be considered an ESHA should include a consideration of the regional rarity of suitable tree stands and the proximity of the trees in question to major wetland complexes. Suitable tree stands are those that meet wading bird roosting and nesting requirements for height, foliage, proximity to water, and proximity to primary foraging grounds. Major wetland complexes are those that are tens to hundreds of acres in size and consist of

⁶ Butler (1992) op. cit

⁷ Parson & Master (2000) op. cit.

⁸ McCrimmen, D. A. Jr., J. C. Ogden, and G. T. Bancroft. 2001. Great Egret (*Ardea alba*). In The Birds of North America, No. 570 (A. Poole and F. Gill, Eds.). The Birds of North America, Inc., Philadelphia, PA

⁹ Parson & Master (2000) op. cit.

¹⁰ Parson & Master (2000) op. cit.

¹¹ Keddy, P.A. Wetland Ecology: Principles and Conservation. 2000. Cambridge Univ. Press, Cambridge, United Kingdom. 614 pp.

some combination of estuary/lagoon, channels, mudflats, salt marsh, brackish marsh, freshwater marsh, and uplands.

It is my professional opinion that the Dana Point Harbor heronries do not rise to the level of ESHA because suitable wading bird tree stands are not regionally rare (numerous such trees stands exist in Lantern Bay Park, Doheny State Beach, and along San Juan Creek) and a major wetland complex is not within the average wading bird foraging distance from the tree stands that support herons and egrets in Dana Point Harbor. Those trees are obviously important for the birds that use them, but the birds are not rare, and the birds and trees do not appear to provide an important ecosystem function for rare southern California coastal saltmarsh habitats.

CALIFORNIA COASTAL COMMISSION

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

TH 22a

September 23, 2009

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District, Orange County
Teresa Henry, South Coast District Manager
Karl Schwing, Orange County Area Supervisor
Fernie Sy, Coastal Program Analyst II

SUBJECT: 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)

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' LCP¹.

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/+50,000 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

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

to 60 ft. high commercial buildings. The area to which this new revitalization plan applies is entirely public tidelands².

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.

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 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

² 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.

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 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, 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) 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. 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.

Click on the links to go to the exhibits.

EXHIBITS

- 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
- 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].

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

Deny the Land Use Plan Amendment, as submitted, and **approve it if modified** as provided below.

The motions to accomplish this recommendation are found on pages 7. As proposed, the LUP Amendment portion of the LCP Amendment does not meet the requirements of and is not in conformity with the Chapter 3 policies of the Coastal Act. Only if modified as recommended will the LUP Amendment meet the requirements of and be in conformity with the Chapter 3 policies of the Coastal Act.

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 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.

A. Denial of the Land Use Plan Amendment as Submitted

MOTION: *I move that the Commission certify Land Use Plan Amendment No. 1-08 to the City of Dana Point Local Coastal Program as submitted by the City of Dana Point.*

STAFF RECOMMENDATION TO DENY:

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

RESOLUTION TO DENY:

The Commission hereby denies certification of the Land Use Plan Amendment No. 1-08 as submitted by the City of Dana Point and adopts the findings set forth below on the grounds that the Amendment does not meet the requirements of or conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. Approval of the LUP Amendment with Suggested Modifications

MOTION: *I move that the Commission certify Land Use Plan Amendment No. 1-08 for the City Dana Point if it is modified as suggested by staff.*

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the Land Use Plan Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan Amendment No. 1-08 for the City of Dana Point if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan Amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

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/+50,000 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 Grant³ 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 harbor⁴. 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

³ 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.

⁴ 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 3.5O (Exhibit 20). While Alternative 3.5O 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.

As stated, while the current proposal is an improvement over the proposal that was before the Commission in June, it would still allow a significant net loss of slips (209) and a loss of 323 slips under 30 feet. 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 with the same number and size of slips. According to the County, that design resulted in the loss of 155 slips overall, 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 shall not exceed 155 slips.

The Commission agrees with the analysis of the reason 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. 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 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 and full operation of the boat storage facility (Policy 4.2.2-10). At that time the Commission will also 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 the average slip length not to exceed 32 feet from its current 30 feet.

These policies are found on Page of the revised LUP (Exhibit 17 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. However, if conformance with current engineering and 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). Under no circumstances shall the net loss of slips exceed 155 slips and the average slip length shall not exceed 32 feet.

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 boat launch facility to maximize the number of vehicle with trailer parking spaces meeting minimum Department of Boating and Waterway guidelines (10' X 40'). Larger vehicle with trailer parking spaces shall also be provided in adequate amount to meet demand as determined through environmental review process (minimum 292 spaces);
- Retain the existing number of dry boat storage spaces until a replacement dry stack storage facility is constructed and open for use. Maintain a minimum of 93 mast up surface boat storage spaces 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 boater parking at a minimum ratio of 0.60 parking spaces per boat slip.

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.

Policy 4.2.2-10 as recommended by the suggested modifications, is intended to protect existing surface dry boat storage spaces since a loss of these spaces would be inconsistent with the Coastal Act requirement to encourage recreational boating and would also adversely impact public access. Currently, the area considered as Planning Area 1 contains a large number of dry boat storage spaces as well as vehicle with trailer parking spaces for the adjacent public launch ramp. A significant loss of these dry boat storage spaces as well as the vehicle with trailer parking spaces would discourage recreational boating opportunities serving the general public which is a high priority use under the Coastal Act.

The Commission finds that while there may be a potential net loss of up to 155 slips if no net loss of slips is found to be infeasible, and a loss of up to approximately 300 slips under 30 feet in length, this loss could be found acceptable with provision of a planned boat storage building capable of storing 400 boats and additional surface boat storage area capable of storing at least 93 mast-up boats based on the information provided by the County/City, 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 surface spaces in addition to the 400 space 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 number (minimum 292) and 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 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 demand⁵.

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 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

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

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.

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. 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 spaces⁶ (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-

⁶ There are about 62 additional on-street spaces along Dana Point Harbor Drive and 65 on-street spaces on Street of the Golden Lantern

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 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 length⁷. The City/County proposed to change this 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

⁷ 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.

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 parking⁸. 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 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

⁸ 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.

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.

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. 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).

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) 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 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 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 do not rise to the level of ESHA, they must be protected as nesting and roosting habitat, 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) for nesting or roosting within the past five years unless necessary for public health or safety reasons. 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 7.1.2-3 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). 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.

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.

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 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.