

CALIFORNIA COASTAL COMMISSION

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May 28, 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 June 2009 meeting in Marina Del Rey).

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 to 60 ft. high commercial buildings.

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

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 June 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 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 400), including a significant reduction in the number of slips under 30 ft 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) ensure that the reduction in the boater parking ratio from 0.75 to 0.60 parking spaces per boat slip does not adversely effect recreational boating use; 6) 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 have been working together to produce a Land Use Plan that is acceptable to all parties. There were a number of issues that we did not initially agree upon, but have now basically found common ground through the modifications suggested by Commission staff. 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 some segments of the public.

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 (approx. 480 slips). Concerns have been raised by the some public members about the loss of smaller slips (under 30 ft) which would be reduced by over 1,100 slips. A policy has been added to the LUP that ensures that the existing boat slips are maintained until a 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 maximize public boat launching parking, 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.

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 has been used in other 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. 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 parking boater parking ratio based on information submitted by the County 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.

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. 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 larger boats. The current lessee wants to retain the shipyard lease area at 2.6 acres, stating that the entire area is needed to maneuver and properly service larger the boats that will be moored in the Harbor under the proposed reconfiguration. The LUP as modified would require the County/City to retain the shipyard land use designation 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.

Visual Resources

The public has raised concerns regarding the impacts upon visual resources by the buildings allowed by the Dana Point Harbor Revitalization Plan. There are a variety of public vantage points from the bluffs surrounding the harbor and from other public areas. 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 the protection and enhancement of public views through open space designations and innovative design techniques have been provided and a policy that limits the heights of anticipated buildings within the harbor.

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

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

Click on the links below to go to the exhibits which are in separate files.

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 6-7. 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).

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 claims 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. Although the uplands are 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 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 entire harbor area is 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:

... (4) 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 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 protected and the Coastal Act provides many policies that ensure this.

Protection of Coastal Resources should be a primary goal associated with any LUP. However, the proposed LUP Amendment does not provide policies to protect Coastal Resources. Therefore, the submitted Dana Point Harbor Revitalization Plan is inconsistent with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act because it fails to provide policies that would 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. 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 the bluffs surrounding the harbor and from other public areas. 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 Commission staff 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, the potential expansion of existing and construction of new private (membership) boating/yacht clubs or associations raises concern since their use on Tidelands and Submerged lands conflict with the Coastal Act since there is potential to prohibit general public access to the harbor and water. In order to adequately deal with the inconsistency of this use with the uses allowed on Tidelands and Submerged Lands and with the Coastal Act, 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; 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; 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; 4) offer sailing, navigation, and boating safety classes and boat use and equipment for free 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.

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.

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, uses consistent with the Tideland Grant and the Coastal Act on these tidelands and submerged lands must be protected. Only if modified to include the above discussed policies can the LUP Amendment be found to be in conformance with Sections 30213, 30220, 30221, 30224 and 30234 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 modified by Commission staff that minimize the 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. While a final marina reconfiguration plan has not been decided, the County/City is requesting a significant reduction (over 1100 slips) in the number of slips for smaller boats (less than 30-feet) for the following stated 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 would have an average slip length of 34 feet.

The Commission agrees with the analysis of the reason for the loss of slips; but is concerned with the actual number of smaller slips being removed without a commitment to providing additional dry boat storage opportunities within the Harbor. Thus, a policy has been provided that states that the number of slips may be reduced in order to meet the demand of the existing waiting list for larger slips, to reduce the number of boats that overhang their current slips by more than 3-feet and to meet current engineering and ADA design requirements; however, the net loss of slips shall not exceed 477 slips and the average slip length shall not exceed 34-feet. A policy has been added that requires the County/City to retain the existing slips in the east and west marina until a dry stack storage facility is constructed and open for use within the Harbor.

Policies have also been provided in the revised plan as modified by Commission staff, 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 477 slips, and a significant loss in the number of slips under 30 feet in length, this loss would be 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. 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.

While an added policy would allow the average slip length to increase from 30 feet to 34 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.

A policy has been added in the revised plan as modified by Commission staff, that requires the retention of a shipyard, no less than 1.6 acres in size, as an allowable use 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 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 # 4.4.4-9 of

the revised plan requires a minimum of 1.6 acres be retained for shipyard use. A shipyard is an allowable use in the MSC land use designation and, therefore, approval of the LUP, as revised, does not preclude the option for the County to allow a larger facility.

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.

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.

Adequate parking must also 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. Thus, the suggested modifications include policies that would provide dedicated parking areas for merchants, restaurants, surface boat storage and boater needs. 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, a policy providing the establishment of a parking management plan will aid in accessing adequate public parking for the harbor. Finally, required parking ratios contained in the Implementation Plan are made a part of the Land Use Plan such that any proposed changes to those policies are reviewed against the Chapter 3 policies of the Coastal Act.

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; 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. 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 that have less than 5 to 10 stands (3 to 15 + trees) of trees within a four mile radius that meet wading bird roosting and nesting requirements (height and foliage and proximity to foraging grounds) 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, policies have 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.

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. 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.

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.

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. 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. 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. This ensures that scenic and visual resources found within the harbor will be protected. There are a variety of public vantage points from the bluffs surrounding the harbor and from other public areas. Planned 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, a policy is included 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.

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 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

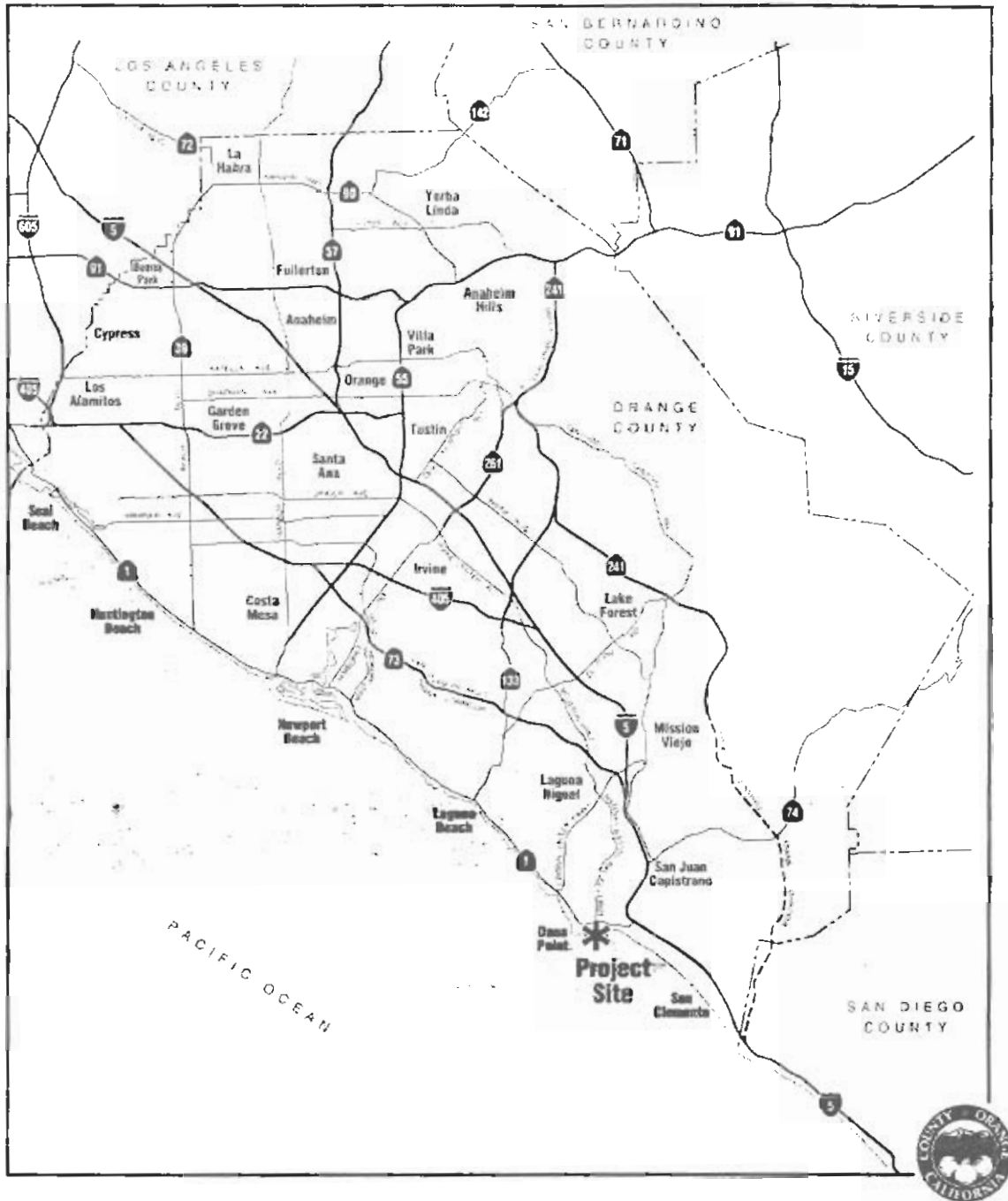
IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.



Dana Point Harbor
REVITALIZATION PLAN & DISTRICT REGULATIONS

REGIONAL VICINITY MAP

Exhibit 1.1-1



06-2009

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

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South Coast Region

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CALIFORNIA
COASTAL COMMISSION

RESOLUTION NO. 06-09-13-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA
POINT, CALIFORNIA, REGARDING LOCAL COASTAL PROGRAM
AMENDMENT LCPA06-03 AND REQUESTING CERTIFICATION BY
THE CALIFORNIA COASTAL COMMISSION

WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Dana Point Planning Commission on June 7, 2006, held a public hearing to consider the adoption of Dana Point Local Coastal Program Amendment LCPA06-03 and via a resolution adopted on June 21, 2006, recommended its approval to the City Council; and

WHEREAS, the City Council, after giving notice as prescribed by law, held a public hearing on September 13, 2006, regarding the proposed Dana Point Local Coastal Program Amendment LCPA 06-03, and the City Council finds that the proposed amendment is consistent with the Dana Point General Plan, the Local Coastal Program and the California Coastal Act; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point as follows:

Section 1. That the above recitals are true and correct and incorporated herein.

Section 2. The City Council of the City of Dana Point certifies that it intends to implement the Local Coastal Program in a manner fully consistent and in conformance with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

Section 3. That the Dana Point City Council approved Dana Point Local Coastal Program Amendment LCPA06-03 pursuant to Ordinance No. 06-08. LCPA06-03 pertains to the adoption of the Dana Point Harbor Revitalization Plan and District Regulations to amend the Dana Point Specific Plan and replace the Dana Point Harbor Planned Community Program document. The amendment is to both the land use plan and the implementing actions. A copy of Ordinance No. 06-08 approving LCPA06-03 with the specific content of the proposed amendment is attached hereto as Exhibit A and is incorporated herein by this reference as though fully set forth herein.

Section 4. The City certifies that it has found that the land use plan as amended is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

Section 5. The City certifies that it has found that the implementing actions as amended are in conformity with and adequate to carry out the provisions of the Coastal Act and land use plan.

EXHIBIT # 2
PAGE 1 OF 3

Section 6. LCPA06-03 pertains to the adoption of the Dana Point Harbor Revitalization Plan and District Regulations to amend the Dana Point Specific Plan and Zoning Code to replace the Dana Point Harbor Planned Community Program.

Section 7. The City hereby certifies that the amendment will be submitted to the Coastal Commission for review and approval and the California Coastal Commission is hereby requested to consider, approve and certify Dana Point Local Coastal Program Amendment LCPA06-03.

Section 8. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Dana Point Local Coastal Program Amendment LCPA06-03 will automatically take effect immediately upon California Coastal Commission approval, as provided in Public Resources Code Section 30512, 30513 and 30519.

Section 9. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 13th day of September, 2006.



LARA ANDERSON, MAYOR

ATTEST:



KATHY M. WARD,
ACTING CITY CLERK

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 3

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

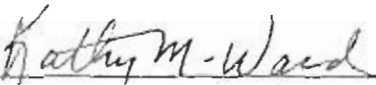
I, Kathy M. Ward, Acting City Clerk of the City of Dana Point, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 06-09-13-06, and was duly passed and adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof, held on the 13th day of September, 2006, by the following roll-call vote, to wit:

AYES: Council Members Harkey, Lacy, Rayfield,
and Mayor Pro Tem Chilton

NOES: Mayor Anderson

ABSENT: None

ABSTAIN: None



KATHY M. WARD,
ACTING CITY CLERK

COASTAL COMMISSION

EXHIBIT # 2
PAGE 3 OF 3

ORDINANCE NO. 06-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADOPTING THE LOCAL COASTAL PROGRAM AMENDMENT LCPA06-03 FOR THE DANA POINT HARBOR REVITALIZATION PLAN AND DISTRICT REGULATIONS, THAT ALSO AMENDS THE DANA POINT SPECIFIC PLAN AND ZONING CODE, FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: County of Orange – Dana Point Harbor Department
File No.: FF# 0630-10/LCPA 06-03

WHEREAS, on July 9, 1991, the City of Dana Point adopted its General Plan; and

WHEREAS, The County of Orange has submitted the proposed Dana Point Harbor Revitalization Plan and District Regulations for the Dana Point Harbor which would amend the City's Local Coastal Program; and

WHEREAS, The Dana Point Harbor Revitalization Plan and District Regulations will amend the Dana Point Specific Plan, replacing the Dana Point Harbor Planned Community Program document; and

WHEREAS, the City of Dana Point adopted a Local Coastal Program, which was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the Dana Point Harbor Revitalization Plan and District Regulations will be consistent with and will continue to provide for the orderly, systematic and specific implementation of the City's General Plan; and

WHEREAS, The Dana Point Harbor Revitalization Plan and District Regulations will constitute the Local Coastal Program for the Dana Point Harbor, satisfying the requirements of the California Coastal Act; and

WHEREAS, the Dana Point Harbor Revitalization Plan and District Regulations is part of a comprehensive planning approach that has included extensive analysis of the Harbor area, including Environmental Impact Report No. 591 that has been certified by the Orange County Board of Supervisors and covers all Dana Point Harbor Revitalization improvements; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act pursuant to Section 21080.9 of the Public Resources Code; and

EXHIBIT # 3
PAGE 1 OF 6

COASTAL COMMISSION

WHEREAS, on June 7, 2006, the Planning Commission of the City of Dana Point conducted a duly noticed public hearing to consider the Dana Point Harbor Revitalization Plan and District Regulations as an amendment to the City's Local Coastal Program; and

WHEREAS, at said public hearing, upon hearing and considering all documents, testimony and arguments of all persons desiring to be heard, the Planning Commission considered all factors relating to the Dana Point Harbor Revitalization Plan and District Regulations as an amendment to the City's Local Coastal Program, LCPA 06-03, the Dana Point Specific Plan and Zoning Code; and

WHEREAS, on June 21, 2006 the Planning Commission adopted a Resolution to forward its recommendations to the City Council for approval of the Dana Point Harbor Revitalization Plan and District Regulations and Local Coastal Plan Amendment LCPA 06-03 through Resolution No. 06-06-21-22; and

WHEREAS, the City Council did on September 13, 2006 conducted a duly noticed public hearing as prescribed by law to consider the Dana Point Harbor Revitalization Plan and District Regulations and Local Coastal Plan Amendment LCPA 06-03; and

WHEREAS, at the public hearing of September 13, after consideration of the recommendations of the Planning Commission, public testimony and evidence, the City Council made additional amendments to the Local Coastal Program Amendment and Dana Point Harbor Revitalization Plan and District Regulations as submitted and amended by the County; and

WHEREAS, the Dana Point Harbor Revitalization Plan and District Regulations, (Exhibit A is hereby amended by the City Council as identified by Exhibit B) attached hereto and made a part of this Ordinance; and

WHEREAS, at said public hearing, upon hearing and considering all documents, testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to LCPA 06-03; and

THE CITY COUNCIL OF THE CITY OF DANA POINT DOES ORDAIN AS FOLLOWS:

Section 1. That the above recitations are true and correct.

Section 2. The City Council finds as follows:

- A. That the proposed action complies with all other applicable requirements of State law and local Ordinances;

COASTAL COMMISSION

EXHIBIT # 3
PAGE 2 OF 6

- B. That the adoption of the proposed Dana Point Harbor Revitalization Plan and District Regulations as an amendment to the Dana Point Specific Plan and Local Coastal Program and Zoning Code is in the public interest;
- C. That the Local Coastal Program Amendment LCPA 06-03 is consistent with, and will be implemented in full conformity with the Coastal Act;
- D. That the City Council adopts the following specific findings:
1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed.
 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter 3 policies of the Coastal Act in that the amendment is a Harbor Land Use Plan that meets the requirements of and implements the provisions and policies of the Coastal Act at the local level by protecting, maintaining and, where feasible, enhancing the natural and scenic qualities of coastal resources; assures access consistent with conservation principles and constitutionally protected private property rights; assures priority for coastal-dependent and coastal-related development; and, encourages state and local government cooperation concerning the planning and development process.
 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the locations and intensity of land and water uses in that subsequent development within the harbor will be reviewed for compliance with the Coastal Act provisions and other applicable state law.
 4. That the level and pattern of development proposed is reflected in the amended Land Use Plan, Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 3 OF 6

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.
6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's Zoning Code is being amended concurrently with the LCP amendment.
7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
8. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.
9. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
10. The Resolution No. 06-09-13-06 of the City Council specifies that Local Coastal Program Amendment LCPA 06-03 be submitted to the Coastal Commission for certification.

Section 3. Chapter 9.25 of the City's Zoning Code is hereby deleted in its entirety and amended to read as follows:

Chapter 9.25

DANA POINT HARBOR DISTRICT

Sections:

9.25.010 Dana Point Harbor Revitalization Plan & District Regulations

9.25.010 Dana Point Harbor Revitalization Plan & District Regulations.

The land use and development regulations for this area are contained in the Dana Point Harbor Revitalization Plan & District Regulations included at Appendix C of the Dana Point Zoning Code.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 4 OF 6

Section 4. The Dana Point Harbor Revitalization Plan & District Regulations shall replace in its entirety the Dana Point Harbor Planned Community District Development Plan and thereby amend the relevant portion of the Dana Point Specific Plan as applicable.

Section 5. The Dana Point Harbor Revitalization Plan & District Regulations shall be included as Appendix C of the Dana Point Zoning Code. Furthermore, a reference to the Dana Point Harbor Revitalization Plan and District Regulations shall replace any reference to the Dana Point Harbor Planned Community in the City's Zoning and Municipal Code including, but not limited to, Appendix A of the Zoning Code.

Section 6. The County of Orange operated parking lot on Selva Road shall not be an option for boat storage, except during interim periods of construction for Planning areas 1, 2, 9 and 10. The County shall also take the City Council's other comments, as expressed at the 9-13-06 Council meeting, into consideration as the Plan goes forward to the extent that it is feasible.

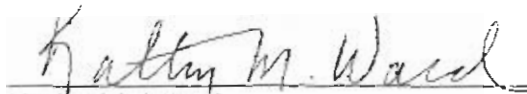
Section 7. The City Clerk shall certify to the adoption of this Ordinance and shall cause a summary thereof to be published as required by law.

PASSED, APPROVED, AND ADOPTED this 27th day of September, 2006.



LARA ANDERSON, MAYOR

ATTEST:



Kathy M. Ward
Acting City Clerk

COASTAL COMMISSION

EXHIBIT # 3
PAGE 5 OF 6

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

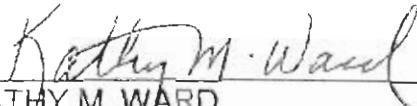
I, Kathy M. Ward, Acting City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 06-08 was duly introduced at a regular meeting of the City Council on the 13th day of September, 2006, and was duly adopted and passed at a regular meeting of the City Council on the 27th day of September, 2006, by the following vote, to wit:

AYES: Council Members Harkey, Lacy, Rayfield
 Mayor Pro Tem Chilton, and Mayor Anderson

NOES: Mayor Anderson

ABSENT: None

ABSTAIN: None


KATHY M. WARD
ACTING CITY CLERK

COASTAL COMMISSION

EXHIBIT # 3
PAGE 6 OF 6



November 7, 2007

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South Coast Region

NOV 7 2007

**CALIFORNIA
COASTAL COMMISSION**

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302
Attn: Mr. Fernie Sy

Re: **City of Dana Point LCPA 06-03/Coastal Commission Reference
No. DPT-MAJ-03-06 for the Dana Point Harbor Revitalization Plan and
District Regulations**

Dear Mr. Sy:

In response to our numerous meetings and telephone conversations over the last several months regarding the above referenced application submittal, the City of Dana Point, in cooperation with the County of Orange – Dana Point Harbor Department has prepared a companion document to the Dana Point Harbor Revitalization Plan and District Regulations, intended to directly address concerns previously identified by Coastal staff in our original submittal. The Supplemental Text as it is titled provides a "more traditional" approach to presenting the Land Use Plan components of our Local Coastal Program Amendment. It should be noted that none of the information contained in the Supplemental Text document is different from that considered by the Dana Point City Council in their deliberations on the Dana Point Harbor Revitalization Plan. The goals and policies presented in the document are directly taken from several different approval documents, all previously certified by the Coastal Commission as components of the City's certified LCP.

It is our hope that once Commission staff has reviewed all the components of our application and has deemed it complete, we can work together to prepare an analysis of the County's Revitalization Plan for Dana Point Harbor to forward on to the Commission for consideration. This is an extremely important project for the City and any assistance required to facilitate a timely review of the materials that comprise our application is available from the City or the County of Orange – Dana Point Harbor Department. In the event you have any questions regarding our application, please do not hesitate to contact me directly, or alternatively, Brad Gross, the new Director of the Dana Point Harbor Department.

Thank you in advance for your assistance in processing our application request.

Sincerely,

Kyle Butterwick
Director of Community Development

COASTAL COMMISSION

EXHIBIT # 4

PAGE 1 OF 1

Harboring the Good Life



**Table 3-1
EXISTING AND PROPOSED LAND USE SUMMARY**

Planning Area	Existing	Proposed (maximum)	Difference
Planning Area 1 – Marine Services (25.2 acres)			
Dry-Stack Boat Storage (two buildings)	NA	800 spaces (see note)	+800 spaces
Dry-Stack Boat Storage & Adjacent Buildings	NA	50,000 (400 spaces)	+50,000 (400 spaces)
▪ Offices and Boater Lounge	NA	5,600 s.f.	+5,600 s.f.
▪ New Marine Retail Store ¹	NA	9,100 s.f.	+9,100 s.f.
Boater Service Building (BSB)			
▪ BSB X	5,000 s.f.	0 s.f.	-5,000 s.f.
Shipyards Building	5,000 s.f.	2,500 s.f.	-2,500 s.f.
Lighthouse Facility ²	NA	2,500 s.f.	+2,500 s.f.
County Maintenance Yard Buildings ³			
▪ Offices	1,800 s.f.	0 s.f.	-1,800 s.f.
▪ Garage	1,800 s.f.	0 s.f.	-1,800 s.f.
▪ Sheds	520 s.f.	0 s.f.	-520 s.f.
Fuel Dock	750 s.f.	750 s.f.	0 s.f.
Planning Area 2 – Day Use Commercial (18.1 acres)			
Boater Service Building (BSB)			
▪ BSB 1 ⁴	4,600 s.f.	6,800 s.f.	+2,200 s.f.
Catalina Terminal Building	0 s.f.	1,000 s.f.	+1,000 s.f.
Retail	26,000 s.f.	32,800 s.f.	+6,800 s.f.
Restaurant	51,300 s.f.	78,400 s.f.	+27,100 s.f.
Planning Area 3 – Visitor- Serving (9.5 acres)			
Hotel	136 rooms	220 rooms	+84 rooms
Meeting Space	2,000 s.f.	12,000 s.f.	+10,000 s.f.
Restaurant	0 s.f.	2,750 s.f.	+2,750 s.f.
Retail	0 s.f.	500 s.f.	+500 s.f.
Fitness Center	450 s.f.	1,500 s.f.	+1,050 s.f.
Boater Service Buildings (BSBs)			
▪ BSB 2 ⁵	3,600 s.f.	1,000 s.f.	-2,600 s.f.
▪ BSB 3	3,600 s.f.	6,600 s.f.	+3,000 s.f.
▪ BSB 4	5,000 s.f.	7,000 s.f.	+2,000 s.f.
Planning Area 4 – Marine Commercial (25.6 acres)			
Harbor Patrol Building	6,000 s.f.	7,500 s.f.	+1,500 s.f.
Restaurant	10,000 s.f.	15,000 s.f.	+5,000 s.f.
Boater Service Buildings (BSBs)			
▪ BSB D (Dana West Yacht Club)	3,600 s.f.	8,600 s.f.	+5,000 s.f.
▪ BSB E	3,600 s.f.	5,600 s.f.	+2,000 s.f.
▪ BSB F	3,600 s.f.	5,600 s.f.	+2,000 s.f.
▪ BSB 5	4,000 s.f.	6,600 s.f.	+2,600 s.f.
▪ BSB 6	3,600 s.f.	6,600 s.f.	+3,000 s.f.
▪ BSB 7	3,600 s.f.	6,600 s.f.	+3,000 s.f.
▪ BSB 8	3,600 s.f.	6,600 s.f.	+3,000 s.f.
Dana Point Yacht Club	12,400 s.f.	18,000 s.f.	+5,600 s.f.
Planning Area 5 – Day Use Recreation (21.1 acres)			
Youth and Group Facility	11,000 s.f.	17,000 s.f.	+6,000 s.f.
Boater Service Buildings (BSBs)			
▪ BSB A	3,600 s.f.	5,600 s.f.	+2,000 s.f.
▪ BSB B	3,600 s.f.	5,600 s.f.	+2,000 s.f.
▪ BSB C (County Harbor Department)	3,600 s.f.	5,600 s.f.	+2,000 s.f.
Planning Area 6 – Education and Institutional (3.6 acres)			
Ocean Institute	32,000 s.f.	32,000 s.f.	0 s.f.
Planning Area 7 – Conservation (4 acres)			
No Development	0 s.f.	0 s.f.	0 s.f.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 2



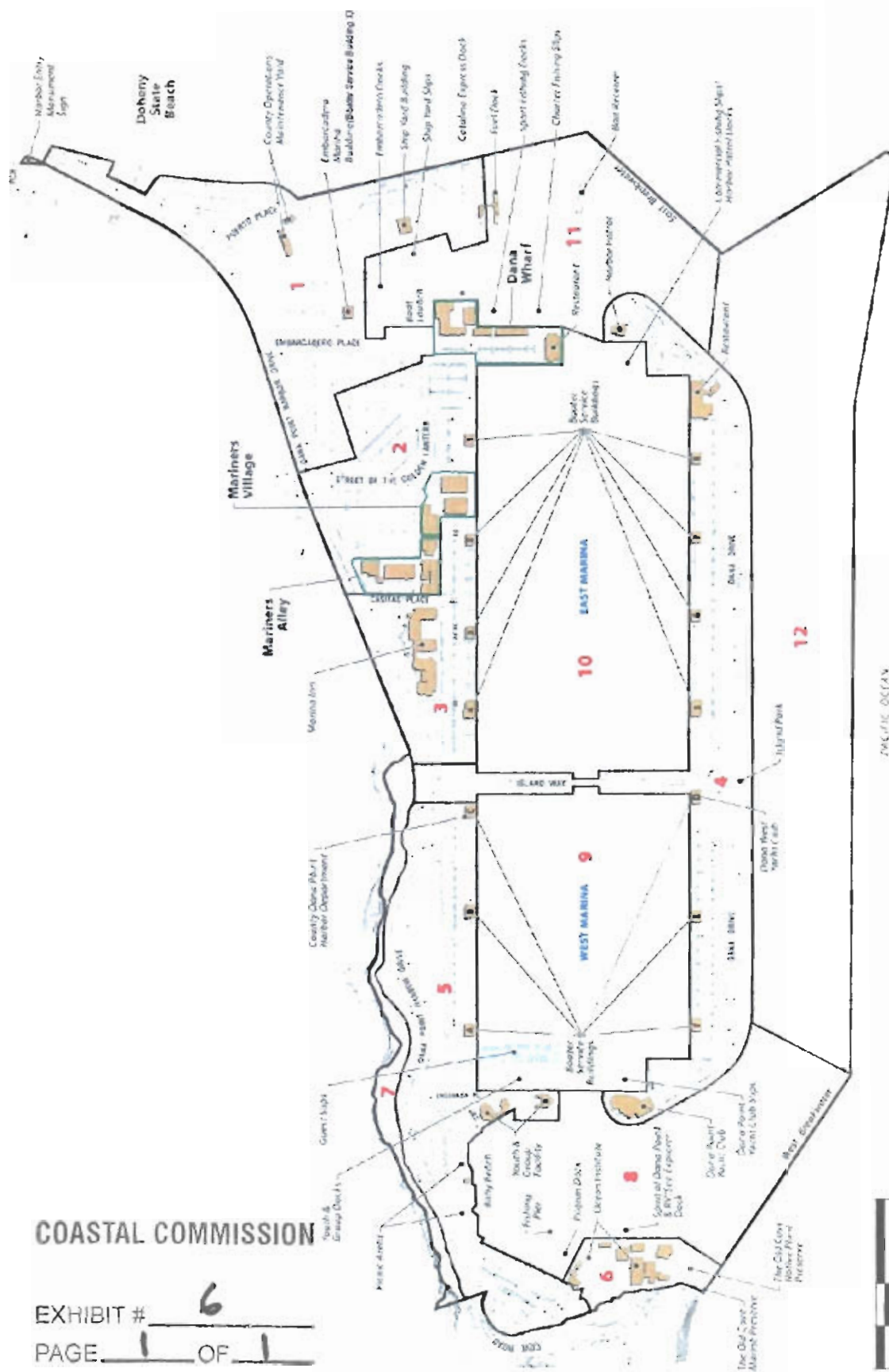
Table 3-1 (continued)
EXISTING AND PROPOSED LAND USE SUMMARY

Planning Area	Existing	Proposed (maximum)	Difference
Planning Area 8 – Educational Basin (25.8 acres)			
Baby Beach	0 s.f.	0 s.f.	0 s.f.
TOTAL	219,220 s.f.	323,300 s.f.	+104,080 s.f.⁵
TBD = to be determined; s.f. = square feet; NA = not applicable			
Notes: ¹ Includes the relocation of approximately 3,000 square feet from Planning Area 2. ² The lighthouse facility in Planning Area 1 contains a 500 square foot lighthouse and up to 2,000 square feet of other accessory uses. ³ The County Maintenance Yard Buildings will be moved off-site to a location to be determined at a later date. ⁴ The yacht brokerages in Boater Service Buildings 1 and 2 will be moved into the Commercial Core. The new Boater Service Building 2 will be a combination public restroom facility and Boater Service Building. ⁵ The increase in square footage does not reflect the additional 84 hotel rooms (Planning Area 3) and 800 dry stack spaces (Planning Area 1) proposed as part of the Revitalization Plan.			

Note: As a result of the action taken by the Dana Point City Council (Ordinance No. 06-08 and Resolution No. 06-09-13-06, adopted on September 13, 2008), the second dry stack boat storage facility building was removed from the Dana Point Harbor Revitalization Plan and District Regulations resulting in the statistical changes noted for Planning Area 1.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2



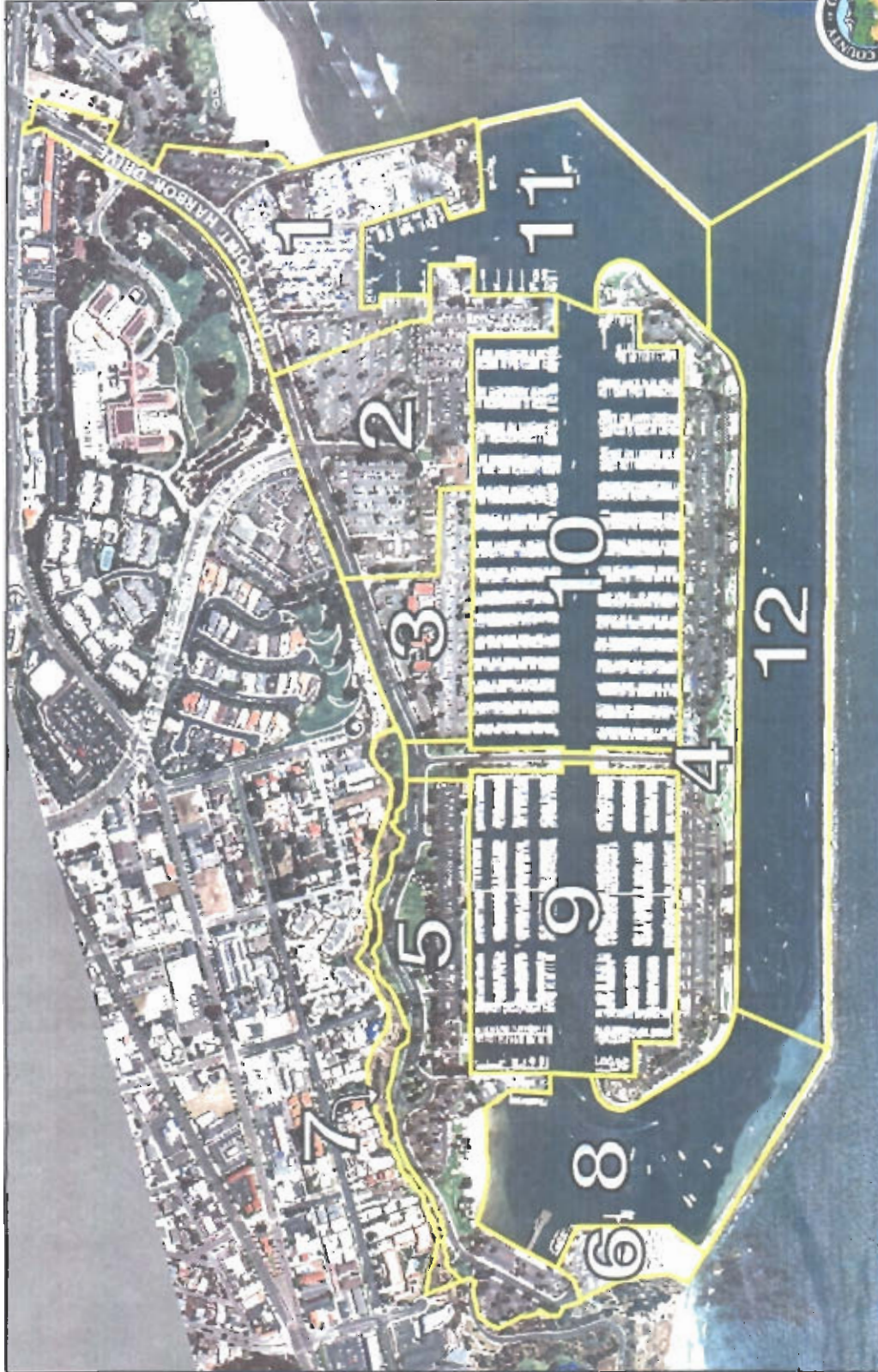


EXHIBIT 1.1-2

PLANNING AREA MAP

04-2009



Dana Point Harbor
REVITALIZATION PLAN & DISTRICT REGULATIONS

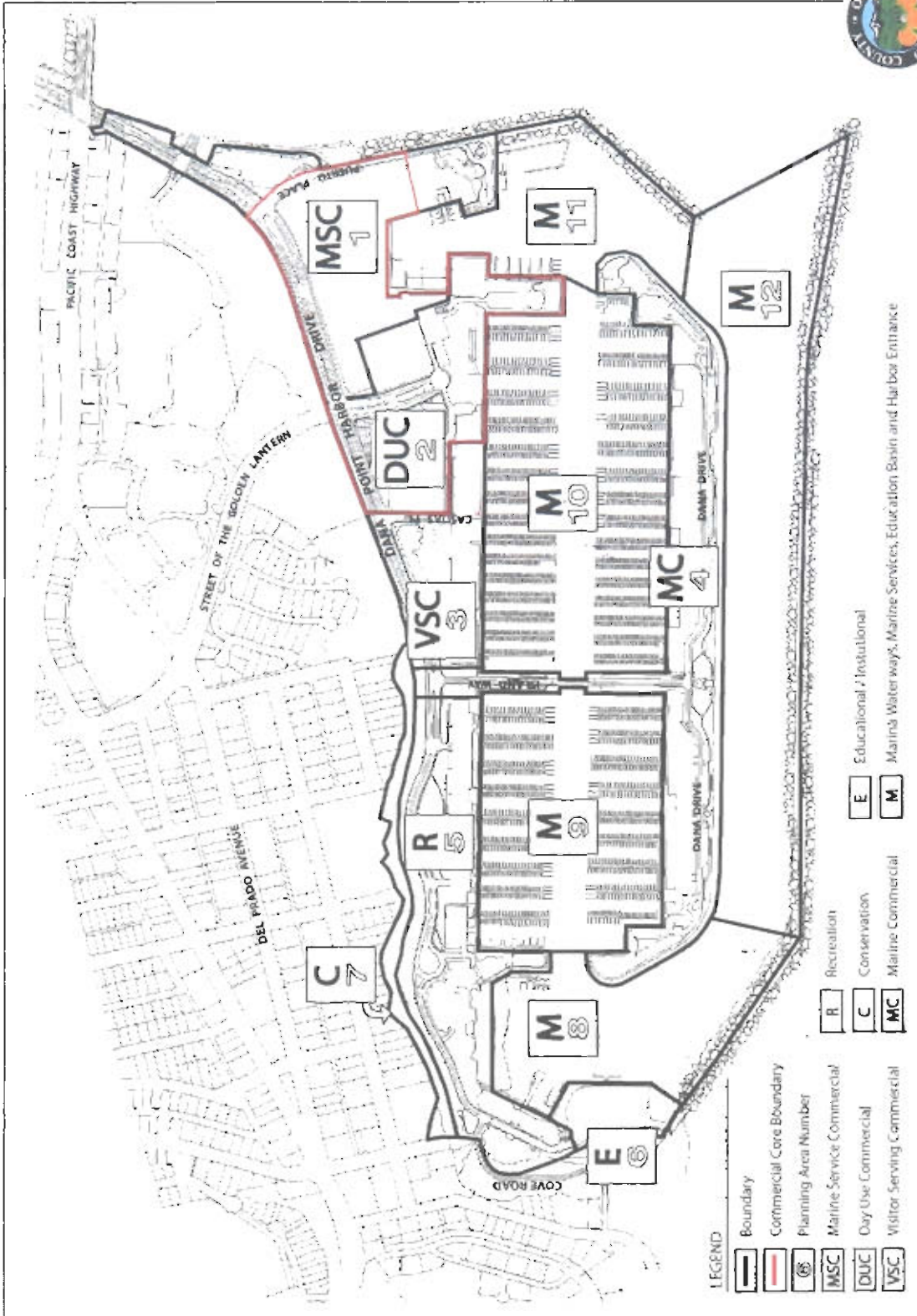




Exhibit 2.1

DANA POINT HARBOR LAND USE PLAN

06-2009



Dana Point Harbor

REVITALIZATION PLAN & DISTRICT REGULATIONS



Current Anchor Marine Lease Boundary - 2.6 Acres*

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JAN 6 2009

*Acreages are approximate

ATTACHMENT C

DPH - EXISTING AND PROPOSED ACREAGES

1/29/2009

PLANNING AREAS 1 & 2	Existing	Proposed
Marine Services	15.85	13.70
Public Parking	8.74	9.43
Buildings - Boater Serving	0.38	0.69
Buildings - Day Use Commercial	2.06	1.92
Recreation	0.75	1.21
Common Area	13.57	15.95
County Yard	0.89	0.00
Boater Parking	1.06	0.40
COMBINED TOTAL	43.30	43.30

Change

Notes

-2.15 Dry stack building adds an additional Marine Services area not included in these acreages. Net increase.
 0.69 Upper level of parking deck adds additional Public Parking not included in these acreages. Net increase.
 0.31
 -0.14
 0.46
 2.38
 -0.89
 -0.66

Boater dedicated parking is reduced but sufficient dedicated boater parking is provided to meet DBW standards. Need is also reduced due to relocation of visitor slips.

AREA 3	Existing	Proposed
Marine Services	0.00	0.00
Public Parking	1.35	1.35
Buildings - Boater Serving	0.16	0.16
Buildings - Day Use Commercial	0.00	0.00
Recreation	0.00	0.00
Common Area	2.99	2.99
Boater Parking	1.06	1.06
Visitor Serving	3.94	3.94
TOTAL	9.50	9.50

No Change
 No Change
 No Change
 No Change
 No Change
 No Change
 No Change
 No Change

AREA 5	Existing	Proposed
Marine Services	0.00	0.00
Public Parking	3.47	3.47
Buildings - Boater Serving	0.50	0.50
Buildings - Day Use Commercial	0.00	0.00
Recreation	6.22	6.22
Common Area	6.78	6.78
Boater Parking	4.13	4.13
Visitor Serving	0.00	0.00
TOTAL	21.10	21.10

No Change
 No Change
 No Change
 No Change
 No Change
 No Change
 No Change
 No Change

AREA 7	Existing	Proposed
Conservation - Bluffs	4.00	4.00
TOTAL	4.00	4.00

No Change

AREA 4	Existing	Proposed
Marine Services	0.00	0.00
Public Parking	2.09	2.09
Buildings - Boater Serving	0.85	0.85
Buildings - Day Use Commercial	0.32	0.32
Recreation	4.45	4.45
Common Area	8.18	8.18
Boater Parking	9.71	9.71
Visitor Serving	0.00	0.00
TOTAL	25.60	25.60

AREA 6	Existing	Proposed
Marine Services	0.00	0.00
Public Parking	0.85	0.85
Buildings - Boater Serving	1.10	1.10
Buildings - Day Use Commercial	0.00	0.00
Recreation	0.00	0.00
Common Area	1.65	1.65
Boater Parking	0.00	0.00
Visitor Serving	0.00	0.00
TOTAL	3.60	3.60

GRAND TOTAL (All PA's)	107.10	107.10
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COASTAL COMMISSION

EXHIBIT # 10
 PAGE 1 OF 1

CALIFORNIA STATE
LANDS COMMISSION

JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*

EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922

January 13, 2009

RECEIVED
South Coast Region

File Ref: G09-00

Ted Olsen, President
Dana Point Boaters Association
P.O. Box 461
Dana Point, CA 92629

JAN 9 1 2009

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Olsen:

Subject: Dana Point Harbor Revitalization Project

Thank you for the letters on October 13, 2008 and December 2, 2008. I shared your October 13, 2008 letter with the Commissioners at the October 16, 2008 Commission meeting. I had not received your second letter until after our December 3, 2008 Commission meeting, but have forwarded your letter to the Commissioners for their information.

The Dana Point Harbor Revitalization Project (Project) as proposed involves lands that were legislatively granted to the County of Orange, pursuant to Chapter 321, Statutes of 1961, and as amended, with minerals reserved to the State. All tide and submerged lands, as well as navigable rivers, sloughs, etc., are impressed with the Common Law Public Trust. The public trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, water-related recreation, or other recognized Public Trust purposes. Any development, leases or franchises, involving these lands must be consistent with the terms of the legislative grant and the Public Trust Doctrine.

While you are correct in that the legislative granting statute includes wording that the lands shall be used "...only for the establishment, improvement and conduct of a harbor..." it is important to note that other uses are also authorized by the statute. These uses include, but are not limited to, "other utilities, structures, or other facilities necessary or convenient for the promotion and accommodation of commerce and navigation, and for recreational use, public park, parking, highway, and business incidental thereto."

By virtue of the trust grant, the California Legislature has granted the day-to-day management of the State's public trust lands within Dana Point Harbor to Orange County (County). The County is the State's trustee in managing its public lands and assets. While the Commission retains oversight jurisdiction to ensure that the

EXHIBIT # 11
PAGE 1 OF 2

management of these public trust lands is consistent with the County's statutory trust and the Common Law Public Trust Doctrine, the Commission does not make priority determinations between competing public trust consistent uses. Trustees, as administrators of their respective public trust lands, are charged with choosing among competing public trust uses. With a few exceptions, trustees are not required to secure approval from the Commission before embarking on development projects on their trust lands or before expending revenues generated from activities on these lands. However, Commission staff often advises its trustees on whether a certain development or expenditure is consistent with the public trust.

Your letter quotes from the Commission's Public Trust Policy statement that the Commission may choose among competing valid uses. This particular section references sovereign lands that are under the direct jurisdiction of the Commission. As stated above, in the case of Dana Point Harbor, the lands involved are sovereign lands that have been legislatively granted to a local municipality, where all right, title and interest in the property has been transferred, in trust, to the grantee with the Commission acting in a limited oversight capacity. Additionally, the reference to the Legislature not delegating the authority to modify uses permitted on public trust lands applies as a limitation to not authorize non-trust uses, such as private office space or residential use, as opposed to discretionary considerations of competing trust uses.

Based on the information provided, Commission staff cannot take a position of opposition before the California Coastal Commission when Orange County's Local Coastal Plan (LCP) amendment is considered. However, Commission staff will follow the County's LCP amendment process and make comments as needed. I encourage you to contact the California Coastal Commission regarding the displacement of recreational boating and boating resources as the Coastal Commission retains the jurisdiction in enforcing the California Coastal Act. The State Lands Commission staff will continue to monitor the Project and to ensure that uses proposed and developed will be consistent with the public trust and the County's legislative grant.

If you have any questions, please do not hesitate to contact Grace Kato at (916) 574-1227 or via email at katog@slc.ca.gov. Thank you.

Sincerely,



PAUL D. THAYER
Executive Officer

cc: Brad Gross, Dana Point Harbor Department, Orange County
Fernie Sy, California Coastal Commission
Grace Kato

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF 2



ATTORNEYS AT LAW

18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
T 949.833.7800
F 949.833.7878

John P. Erskine
D 949.477.7633
jerskine@nossaman.com

Refer To File #: 290529-0001

VIA FEDERAL EXPRESS

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South Coast Region

MAY 11 2009

**CALIFORNIA
COASTAL COMMISSION**

May 8, 2009

Chairman Neely and Commissioners
California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302

**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:

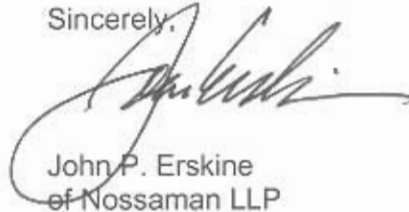
- 1) MBA's Updated February 24, 2009 Shipyard Market & Operations Analysis – Revised Recommendation;
- 2) MBA's March 26, 2009 Response to County's URS/Cash study;
- 3) Powerpoint presentation comparing the Dana Point Shipyard with the marine services provided in Newport Beach and Basin Marine Shipyard).



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

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)

LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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IRVINE, CALIFORNIA 92612-0177
(949) 833-7800 TEL. (949) 833-7878 FAX
www.nossaman.com

CAROLLYN B. LOBEL
(949) 477-7504 Direct
clobell@nossaman.com

REFER TO FILE #
290529-0001

January 2, 2008

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South Coast Region

MAY 11 2009

CALIFORNIA
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

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.

281000_5.DOC

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

DPT-MAJ-1-08

Exhibit #12

4 of 40

Brad Gross
January 2, 2008
Page 2

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

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

Brad Gross
January 2, 2008
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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

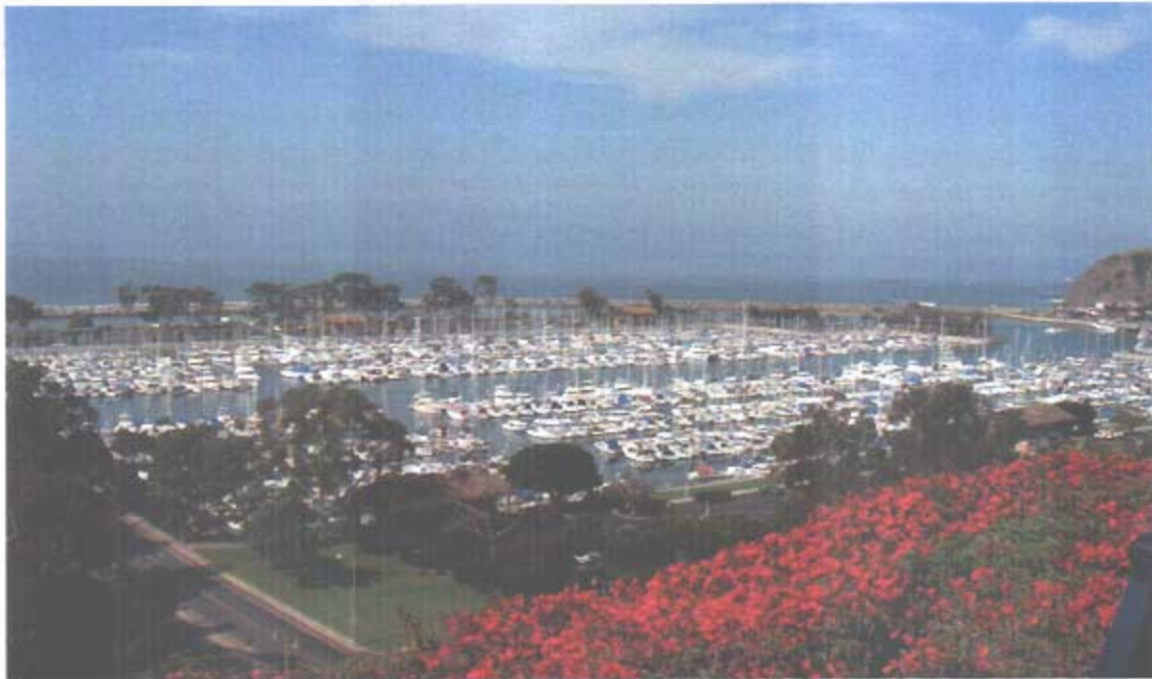
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CALIFORNIA
COASTAL COMMISSION

DANA POINT SHIPYARD

***Market & Operations Analysis Review
with Revised Considerations & Recommendations***



Prepared by:

James "J" Mills, Consultant



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February 24, 2009

DPT-MAJ-1-08
Exhibit #12
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Introduction & Objectives:

This report and the included considerations and recommendations are based on analysis of the currently proposed Dana Point Harbor Marina Improvement Project Alternatives #3 & #4, and the projected impact of those marina improvements on future shipyard operations and facilities. The report is based solely on the analysis of Alternatives #3 & #4 due to the assumption that these design alternatives are the most likely to be implemented under the final revitalization plan.

Marina Business Associates has been retained by Anchor Marine, Inc., dba: Dana Point Shipyard to determine if the alternative proposals for the marina dock configuration will have a significant impact on the future market demand and other operational considerations for shipyard services in Dana Point Harbor, and to develop appropriate recommendations for future shipyard facilities and services, based on the proposed Harbor Revitalization Plan Alternatives #3 & #4, and projected demand for shipyard services, as well as environmental and other operational considerations.

Methodology:

The following research, analysis and methodology were applied in the preparation of this report by James "J" Mills, Principal Consultant:

- Marina Business Associates conducted a thorough review of the previous analysis and report, *Market and Operations Analysis & Capital Improvement Considerations* dated August 31, 2006, and all associated data included in that report, and applied the same basic methodology to the preparation of this new report and recommendations.
- Data from the County's current water-side slip mix design Alternatives #1 - #5, now under consideration was reviewed and a spreadsheet analysis was prepared of Alternatives #3 & #4, to develop market demand projections based on projected future vessel sizes and occupancy within the new alternative marina configurations.
- Data from previous market survey interviews and site inspections was reviewed and revised as applied to comparable competitive shipyard operations and facilities. The facilities surveyed and considered were:
 - Newport Harbor Shipyard, Newport Beach, CA
 - Balboa Boat Yard, Newport Beach, CA
 - Basin Marine Shipyard, Newport Beach, CA
 - South Coast Shipyard, Newport Beach, CA
 - Larsen's Shipyard, Newport Beach, CA
 - Svendsen's Shipyard, Alameda, CA
 - Mariner's Shipyard, Alameda, CA
 - Harbour Towne Marina & Shipyard, Dania Beach, FL
- Dana Point Shipyard facility site plans and layouts prepared for the previous report were reviewed and revised in order to develop the most appropriate shipyard facility design based on the current marina design alternatives and the projected service demand, space utilization requirements, and other property and operations parameters. (See attached "Conceptual Site Plan 2.1")

Key Considerations:

- The current Dana Point Shipyard facilities are not capable of providing adequate shipyard services to most vessels over 40 feet in length due to the existing shipyard layout and facilities, boat lift capacity, and environmental remediation measures in place.
 - Since the Shipyard's initial development more than 30 years ago, the average vessel size (length, weight and beam), and the number of larger vessels in Dana Point Harbor requiring shipyard services, has increased significantly.
 - The current boat lift has a maximum capacity of 50 tons and is limited to vessels with a beam measurement of no more than 18', limiting its capacity to vessels typically less than 45' in length.
- The Dana Point Harbor Revitalization Plan proposes to downsize and reduce the Dana Point Shipyard space and related services at a time when current market conditions and elements of the Revitalization Plan clearly create an increased demand for shipyard services. A well run, full-service shipyard provides an important amenity and source of revenue to the Harbor. Without adequate shipyard capacity and the ability to address the needs of a growing number of larger vessels and clientele demanding more comprehensive shipyard services, Dana Point Harbor will not be able to meet the shipyard service needs of the marina slip holders forcing these slip holders, and potential outside and visiting vessel customers, to seek services elsewhere and / or violate environmental guidelines and regulations in the Harbor.
 - Since the Dana Point Shipyard is the only shipyard facility in the Harbor and immediate surrounding area, there is a significant need for readily available space both in the water and on land to facilitate emergency response requirements.
 - Certain environmental and operational upgrades to the facilities will also be required in the future, including larger boatlift capacity and environmental containment systems, which will enhance the need for increased shipyard space.
- Increasing economic and environmental concerns make it unlikely that any new shore-side shipyard facilities will be developed or allowed within the Orange County coastal area in the future. In fact it is likely that access to area shipyard services will decrease in certain markets despite an increasing demand created by more larger vessels. These demand pressures are already in evidence in some area markets where long waiting periods and high prices for shipyard services are leading to higher incidents of unmaintained and abandoned vessels.
 - The Dana Point Shipyard is one of the few shipyard facilities in Southern California that provides facilities for do-it-yourself and outside contractor maintenance services, providing vessel owners with economical and effective alternative shipyard services. A reduction in shipyard space would necessarily have the greatest impact on these services compounding the negative economic and environmental consequences

Newport Harbor Shipyard Services Comparable Data and Market Analysis:

- Newport Harbor is approximately 15 nautical miles from the Dana Point Harbor and provides the closest comparable alternative for shipyard services.
- There are currently five operating shipyards in Newport Harbor with the capacity for vessel haul outs directly from the water to a land shipyard facility. There are also several other inland based facilities in surrounding cities capable of providing most marine services to trailerable vessels under 35 feet in length.
- Total yard area (not including parking and office / building space) of the combined shipyards in Newport Harbor is approximately 3.5 acres and average combined vessel capacity is approximately 40 vessels at any one time.
 - One of the yards has an area of approximately 1.5 acres and can service vessels up to 110' with a 90 ton lift. Vessel capacity in the yard averages only 15 vessels due to yard dimensions and layout of facilities.
 - Another yard facility has an area of approximately 1 acre but is limited to servicing vessels less than 60' due to boat lift capacity (50 ton) and vessel beam limitations. Vessel capacity in the yard is typically 12 -18 vessels.
 - The remaining three yards are each less than half an acre in size and can typically handle 3 – 5 vessels at any one time with lift capacities of 30 ton, 70 ton and 100 ton respectively.
- There are approximately 6,400 vessels berthed (on land & water) in Newport Harbor with an average vessel size of 36'. Approximately 20% of the vessels in the harbor are over 45' in length. Four of the five shipyards indicated that at least 40% of their shipyard business involves vessels over 40 feet in length.
- All of the Newport shipyards indicated that they have a waiting period and require reservations 2 – 4 months in advance for most regular shipyard services during the high season. Larger vessels in particular (>45') are subject to advance reservations due to space and maneuvering limitations. Only one of the facilities allows outside contractors or "do-it-yourselfers" to work in their yard primarily due to the lack of space available, and insurance and environmental concerns. Only one of the yards offers mechanical / engine service and none offers major mechanical services on site. These factors no doubt contribute greatly to the high level of "shipyard" work that is commonly done in-the-slip or off-shore by many vessel owners, despite the potential environmental violations and implications.
- In general, the shipyard facilities in Newport Harbor are older facilities in need of significant updates and improvement to their facilities, equipment and environmental remediation measures. Two of the yards are still using old way-car haul out systems. Haz mat collection mats, spray-paint screening and other containment measures typically used and required in modern shipyard facilities at other venues are not commonly used in these facilities, and it is most likely that at least two of the facilities would be required to close if more stringent environmental regulations were enforced. Current redevelopment and alternative land use pressures in Newport Harbor also make it likely that at least one of these yards will cease operations within the next three to five years.

Dana Point Shipyard Services – Historical Data Analysis:

- 2004 annual business data indicates that a total of 821 vessels were serviced by the Dana Point Shipyard with a low of 43 vessels in December and a high of 100 in April. The low average during the slowest four month period was 52 vessels / month and the high four month average was 91 vessels / month (+75%). The average days in the yard per vessel (turnover) was 6.9 requiring that at least 21 work bays were occupied during the busiest months on average. To meet the peak demand in April at least 23 work bays were required.
 - In 2004 less than 7% (56) of the vessels serviced by the yard were over 40' in length, due primarily to the facility's layout and boat lift limitations.
- 2005 annual business data indicates that a total of 859 vessels were serviced by the Shipyard with a low of 38 in January (following the low of Dec '04) and a high of 102 in June. The average number of vessels serviced during the slowest four month period of the year was 59 / month, and the high four month average was 90 vessels / month (+53%). The average turnover per vessel was 8.7 days requiring that at least 26 work bays were occupied during the busiest months. At this rate of turnover, at least 29 work bays were required to meet the peak demand in June.
 - In 2005 less than 7% (52) of the vessels serviced were over 40', again due primarily to the lack of facilities to service these vessels and the boat lift capacity.
- Based on this historical operations data, an appropriate shipyard design would incorporate a minimum of 23 work bays with the space capacity to service 1 – 2 vessels in the 40'+ size range. Since only smaller vessels can be adequately serviced at the current facilities the current space utilized for shipyard services (approximately 1.6 acres including parking and building space) meets most demand requirements. However, if the Shipyard capabilities are expanded to provide service to more larger-vessels, then the property not currently utilized for shipyard services will have to be upgraded and more space allocated to provide for larger vessel work bays.
 - The configuration of the current boat yard services area (1.6 acres) is NOT appropriate or adequate for the service needs of larger vessels.

Dana Point Slip & Storage & Vessel Size Data Analysis:

- Based on 2006 slip and storage information, there are approximately 2,977 wet and dry vessel storage spaces within the Dana Point Harbor. Approximately 2,746 (92%) of those slips are 40' or less in length with the remaining 231 (8%) over 41' in length.
- *The slip size data does not tell the entire story however, especially for the purpose of evaluating the Shipyard demand.* Based on 2006 vessel size data, there are approximately 2,966 vessels berthed in the Dana Point Harbor. Many if not most of the smaller double end-tie slips counted in the slip inventory have been converted to larger single end-ties for larger vessels. There is also significant over-sizing of vessels in smaller slips as well. Consequently, of the actual vessels in the Harbor, approximately 2,577 (87%) are 40' or less in length and 389 (13%) are over 41' in length (158 (68%) more than is indicated by the slip inventory).

- Based on the 2006 data analyzed above, and assuming that the typical smaller vessel (40' or less) requires a haul out and ship yard work every 3 – 4 years, and typical larger vessels over 40' require shipyard service every 2 – 3 years, the following market demand projections can be made given the 2006 vessel statistics in Dana Point Harbor:

- 1,718 vessels (@ 30' or less) 30% Service Demand = 515 / year
- 1,128 vessels (@ 31' – 50') 35% Service Demand = 395 / year
- 120 vessels (@ 51' or more) 40% Service Demand = 48 / year
- Total vessels requiring service = 958

The above assumptions can be considered conservative given that boat maintenance Best Management Practices dictate that most vessels should have new bottom paint every 1.5 – 3 years. Larger vessels typically require more shipyard services more often and the scope of these services typically pose a greater environmental threat to the surrounding area than smaller vessels if that work is not completed within an appropriately designed shipyard facility.

- Based on 2006 data, and the above analysis and projections, if the shipyard facilities and capacity were expanded to provide appropriate services to larger vessels it is apparent that potential demand is sufficient to require adequate space and services for an additional 100 +/- vessels per year over 40' in length. Given these numbers and assuming a 7.5 day turnover per vessel in the yard, a minimum of 20 work bays, with at least 4 larger than 40' in length (ranging from 45' to 90') would be required to adequately meet the average projected demand. Assuming that the average demand would increase 30% during peak periods, **a minimum of 26 work bays, with at least 6 larger than 40'**, would be required to meet that increased average demand during the busiest months.

Dana Point Harbor Revitalization - Alternatives #3 & #4 Impact Analysis:

- The revitalization of the Dana Point Harbor and Marina facilities as outlined in the County Harbor Revitalization Plan and the proposed Slip Mix Alternatives #3 & #4, will have a significant impact on the demand for shipyard services in the Harbor. Both Alternatives #3 & #4 call for a significant increase in the number of vessels in the 30' – 50' range in order to meet increased demand for vessel berthing in this size range. This increased demand for larger vessel services along with other operational and environmental considerations, will require that the Dana Point Shipyard increase the amount of land and water space utilized to provide adequate shipyard services to the Dana Point Harbor in the future.

Alternative #3 Analysis:

- Based on our analysis of the Revitalization Plan, including estimated dry storage inventory (@ 493 spaces) and the wet slip inventory proposed in Alternative #3 (see attached spreadsheet analysis @ Alternative #3), this plan will result in a total of 2,425 vessel berths **in the harbor** (an effective decrease of 541 compared to current numbers). This slip configuration will result in approximately 988 fewer vessels in the <30' range and 447 more vessels longer than 30' in length. Based on this proposed slip mix, and given the vessel service requirements discussed above, the following market demand projections can be made pertaining to the shipyard after the revitalization is complete:

- 730 vessels (@ 29' or less) 30% Service Demand = 219 / year
 - 1,595 vessels (@ 30' – 49') 35% Service Demand = 558 / year
 - 100 vessels (@ 50' or more) 40% Service Demand = 40 / year
 - Total vessels requiring service = 817
- Based on the above projections, approximately 817 vessels berthed in Dana Point Harbor can be projected to require shipyard services each year. Of those, more than 150 will be vessels over 40' in length (an increase of more than 200% over current utilization). Given these numbers and assuming a 7.5 day turnover per vessel in the yard, a minimum of 17 work bays, with at least 4 larger than 40' in length (ranging from 45' to 90') would be required to adequately meet the average projected demand. Assuming that the average demand would increase 30% during peak periods, **a minimum of 22 work bays, with at least 6 larger than 40'**, would be required to meet that increased demand during the busiest months.
 - *If we assume that 50% of the 988 vessels being displaced from the harbor by the Revitalization Plan will also seek shipyard services, this will add additional demand of 149 vessels / year increasing the average minimum work bays needed to 20 work bays, and the peak period average minimum need to 26 work bays, with at least 6 larger than 40'*

Alternative #4 Analysis:

- Based on our analysis of the Revitalization Plan, including estimated dry storage inventory (@ 493 spaces) and the wet slip inventory proposed in Alternative #4 (see attached spreadsheet analysis @ Alternative #4), this plan will result in a total of 2,528 vessel berths in the harbor (an effective decrease of 438 compared to current numbers). This slip configuration will result in approximately 1,007 fewer vessels in the <30' range and 569 more vessels longer than 30' in length. Based on this proposed slip mix, and given the vessel service requirements discussed above, the following market demand projections can be made pertaining to the shipyard after the revitalization is complete:
 - 711 vessels (@ 29' or less) 30% Service Demand = 214 / year
 - 1,717 vessels (@ 30' – 49') 35% Service Demand = 601 / year
 - 100 vessels (@ 50' or more) 40% Service Demand = 40 / year
 - Total vessels requiring service = 855
- Based on the above projections, approximately 855 vessels berthed in Dana Point Harbor can be projected to require shipyard services each year. Of those, more than 160 will be vessels over 40' in length (an increase of more than 200% over current utilization). Given these numbers and assuming a 7.5 day turnover per vessel in the yard, a minimum of 18 work bays, with at least 4 larger than 40' in length (ranging from 45' to 90') would be required to adequately meet the average projected demand. Assuming that the average demand would increase 30% during peak periods, **a minimum of 24 work bays, with at least 6 larger than 40'**, would be required to meet that increased demand during the busiest months.
 - *If we assume that 50% of the 1,007 vessels being displaced from the harbor by the Revitalization Plan will also seek shipyard services, this will add additional demand of 151 vessels / year increasing the average minimum work bays needed to 21 work bays, and the peak period average minimum need to 28 work bays, with at least 6 larger than 40'*

- The above analysis of the shipyard demand, projected to be generated by either of the studied Alternative revitalization scenarios, does not consider the potential additional demand for services that might also be required for visiting vessels and the existing larger commercial vessels that currently are berthed in areas of the Harbor that lie outside the Revitalization Plan. These additional vessels could contribute an additional 10%+ to the demand for shipyard services and space within the new Harbor shipyard facilities.

Shipyard Layout and Site Planning Design:

- A number of shipyard layout designs and site plans were developed and considered in the course of this analysis. Hogle – Ireland, a land planning and development consulting firm, were retained to assist with the space use and layout considerations and drafting of the plans.
- Particular consideration was given to the following key land use issues in the course of this design work:
 - Providing an adequate number of work bays in the appropriate sizes, and adequate work space to safely and efficiently meet the projected vessel service demands, recognizing that it is possible to fit smaller vessels in larger work bays, but not vice versa.
 - Providing adequate fairways and turning radius within the yard to safely and efficiently move vessels in and out of the work areas.
 - Providing adequate building and storage facilities to house necessary service and repair centers, office space, and equipment and material storage, without the need to significantly remodel or relocate any structures.
 - Providing adequate space for a second, larger boat travel lift, including a new travel lift staging bay, and parking for equipment.
 - Providing adequate dock area to provide safe and efficient staging and delivery of vessels from the water and clear access to the mast / motor crane and facilities.
 - Providing effective and efficiently designed environmental and HazMat remediation measures and containment facilities.
 - Providing adequate parking and safe access to the offices and yard for all customers, employees and contractors visiting or utilizing the yard facilities.
- A representative Conceptual Site Plan (2.1) has been included with this report to illustrate the optimum shipyard layout and land use to meet the projected shipyard demand requirements.
 - This site plan utilizes an area of 2.5 acres and maintains the existing buildings and parking areas (40 spaces), and the total area now under lease to Anchor Marine. The site plan assumes that necessary upgrades and improvements have been made to the property and illustrates an appropriate layout to provide modern and efficient shipyard services for 26 vessels (19 < 45' & 7 > 40'), plus 2 special environmental containment (painting enclosure) facilities. This plan also maintains the current water area and 50 ton travel lift pier, and provides for the addition of a new 90

ton travel lift pier and staging area to facilitate larger vessel haul-outs. Adequate space is provided for equipment storage and parking, emergency haul-outs, as well as easy maneuvering of vessels both on the water and land.

Conclusions:

- The Dana Point Shipyard site is one of the few properties remaining in Southern California where an appropriate, environmentally sound shipyard operation can be developed and maintained.
- Based on demand and service considerations related to the current Dana Point Shipyard operations and business, the Shipyard operations should be expanded and improved to provide the level of service required to meet the existing and future needs of all vessels in the harbor and surrounding area.
 - An optimum shipyard area of 2.5 acres should be maintained to provide adequate space for appropriate shipyard operations and services.
- Improvements and expansion of the Shipyard facilities and operations are necessary now to enhance the Shipyard's operations and ability to efficiently service the existing and projected future customer demand, and improve environmental remediation measures.
- An improved shipyard, with adequate space and appropriate facilities and services will enhance the image and marketability of the overall Dana Point Harbor and establish Dana Point Harbor as a leader in the marine community.
 - The enhanced shipyard facilities and service will serve as an example to the California Coastal Commission, The State Department of Boating & Waterways and other regulatory agencies, of Dana Point's and Orange County's commitment to sound marine development and environmental policies and practices.



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Attachments: DPS Revised Site Plan 2.1 @ 2/2/09 – 1 page
DPS Revised Data Analysis @ 2/2/09 – 4 pages

Review and Analysis Report
Dana Point Harbor Revitalization Plan
Response to Coastal Commission Follow-up Items

Prepared by:

James "J" Mills, Consultant



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March 26, 2009

- The Dana Point Harbor Revitalization Plan / Orange County Harbor Dept. response to the Coastal Commission Follow-up Items is both vague and weak in its scope and argument, and lacks significant relevant data and understanding of the shipyard and marine services business, especially related to CCC Item #1.
- Item #1 requests that the study compare other coastal shipyards (plural) – The study appears to incorporate only a cursory comparison to one (1) Newport Harbor shipyard facility (Basin Marine Shipyard), whose operations, services & market are only marginally comparable to the Dana Point Shipyard (or "DPS").
- The County's primary consultant (URS Cash & Associates) is a well qualified marine engineering and design firm, but the firm has no marine operations, marketing, or business management expertise or experience on which to base their assumptions and conclusions - This could be compared to having an interior design firm providing management advice to a restaurant operation.
- Basin Marine Shipyard is a respected and well run shipyard operation, but they offer a much more limited range of marine services than Dana Point Shipyard and operate in a significantly different market environment and therefore lack relevant experience and expertise on which to base their assumptions and conclusions.
 - Dana Point Shipyard offers the full range of repair and maintenance services (as outlined in the study), including "do-it-yourself" repair space, which is required by the County lease with DPS, engine repair, rigging, electrical, plumbing, wood working. Basin Marine Shipyard does not provide these services, but does allow outside contractors and service providers to provide limited services to customers while in the shipyard.
 - Based on 2005 operations and sales data, approximately 47% of Dana Point Shipyard revenue was generated by mechanical (engine, electric & plumbing systems) repair services and 8.7% of revenue was generated by "do-it-yourself" income.
 - There are of six (6) shipyard facilities in Newport Harbor with a combined total acreage in excess of 6.5 acres serving approximately 3,800 vessels in the water (private & commercial), approx. 1,500 additional in nearby dry storage and approximately 1,100 more in nearby inland storage – Total 6,400 (not including tenders and dinghies). This is approximately 1 acre per 1,000 vessels.
 - Dana point has one (1) shipyard with only 2.6 acres serving approximately 3,000 vessels in the immediate harbor area and an estimated 1,500 more in inland storage – Total 4,500. This is approximately 1 acre per 1,700 vessels.
 - There are approximately 28 boat repair facilities within 5 miles of Newport Harbor.
 - There are approximately 3 boat repair facilities within 5 miles of Dana Point

- The study compares the efficiency of Dana Point Shipyard @ 8 days per vessel to Basin Marine @ 4 days per vessel. While there is some validity to the comparison it was made without considering or understanding the impact of the difference in the range of services offered at the two facilities.
 - Based on 2005 data, shipyard services (including hull & bottom mtnc.) at DPS required an average of 6.7 days per vessel; mechanical services (not offered by Basin Marine) required an average of 17.1 days per vessel; contractor and “do-it-yourself lay days required an average of 3.8 days – with an overall average of 8.7 days / vessel served.
 - The statement in the study that “if the DPS were to maintain an average in-service time similar to BMS..... they would have the capacity to service every boat in the harbor at least once a year”, is NOT a relevant comparison since the scope of services and current operating conditions are not comparable.
 - DPS recognizes and has admitted that the operations and facilities need to be upgraded and streamlined to improve services and efficiency and has offered to do so at their cost.
- The study’s assumption that the average work bay size in the shipyard should be equivalent to the average slip size in the Marina is flawed
 - It is most likely that the average vessel size in the marina will be as much as 10% larger than the average slip size, as evidenced by other marina records analysis.
 - Shore-side shipyard services and facilities should necessarily focus on larger vessel needs since the cost of transporting larger vessels to other locations is significant and smaller vessels have other economical service alternatives due to their trailer-ability.
 - Business experience and market analysis also indicate that smaller vessels typically seek shipyard services less frequently than larger vessels.
 - Larger work bay space can easily be occupied by smaller vessels, however poorly designed smaller work bay space cannot be easily or efficiently utilized by larger vessels
 - The assumption in the study that no work bays larger than 60’ are required is flawed since there are in fact more than 10 vessels in the harbor over 60’ in length now, and the potential exists for numerous (44+) additional vessels over 60’ to occupy the larger slips and end-tie slips in the new marina and other existing commercial slips.
 - The potential for larger vessel emergencies and larger visiting vessel service needs should also be considered.
- The County’s Potential Shipyard Layout – 1.6 Acres has significant business and operational design shortcomings, as we have commented previously.
 - The design assumption that 34 vessels could be accommodated in the yard is not relevant or realistic and is not an optimum design as illustrated
 - The cramped yard layout has very limited maneuverability and flexibility for accommodating differing vessel sizes and configurations

- At least 16 of the vessel bays are NOT readily accessible without first moving vessels illustrated in adjacent spaces
 - At least 10 of the work bays are designed (sized) only for NARROWER "sailboats and will not accommodate standard motor yacht widths.
 - The high number of work bays illustrated in the 20- 30 foot range is not a realistic market assumption.
 - The shipyard operators would spend a major portion of their time just moving vessels around to accommodate arrivals and departures – not an efficient operation, and one that might promote significant damages and injuries.
- The study states that the County's proposed shipyard design will incorporate "minor changes" to the shipyard configuration intended to enhance and expand the shipyard marine service capacity, but contrary to that assertion, the changes appear to be MAJOR and significantly REDUCE the shipyard services, capacity, safety, and efficiency.
- The County's 1.6 acre design calls for the elimination of the existing mast / engine crane, the existing mechanical repair building and other facilities, and it may therefore be assumed that this boater service and other current services will be eliminated.
 - The 30 ton P&H Crane is used for removing and reinstalling engines into and out of vessels and for taking masts down for transport or regular maintenance and rigging, and then reinstallation when repairs are completed. The mechanics shop, which also appears slated for removal in the plan, cannot be incorporated into the new 9,000 sf building that is proposed for numerous reasons. The loud running engines, machine work, welding and associated activities could be potentially dangerous to customers that could wander into the repair area and that type of marine repair work should occur in a dedicated building away from the sales / customer service / administration offices.
 - The cost of removing the existing building and constructing the new 9,000 sf building in the plan will be approximately \$2.7 – \$3.5 million – HARDLY MINOR.
 - The Potential Shipyard Layout calls for a new 50 ton travel lift with a 20' beam capacity (current lift / pier has an 18' beam capacity) – this design change will require that the existing lift bay and ramp pier be rebuilt for a potential combined cost of \$1.0+ million
 - The proposed new 50 ton lift will have a minimal effect in terms of increasing the yards service capacity and will probably not be adequate to service larger vessels in the marina. It would be more advisable to invest and provide for an 80+ton lift with a 24' beam capacity.
 - The County's new shipyard layout does not appear to provide any space for "do-it-yourself" work areas. Is this public service to be eliminated?

- The total cost of making the proposed “minor” changes could easily exceed \$8.0 million and it is doubtful that the proposed layout could support the projected level of business – is this financially feasible?
 - The reduced parking area will not provide adequate parking for employees, contractors, and customers, especially given the potential of servicing 46 vessels at any one time as illustrated
- The County’s Potential Shipyard Layout does not appear to be supported by any financial or economic feasibility analysis or planning, and may in fact lack investment and business viability for both the County and any potential operator, which could result in the elimination of viable shipyard services in the harbor.



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Response to URS/Cash Response to Coastal Commission Staff Questions (April 2009)

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22 of 40



Newport Beach
Basin Marine



Dana Point Shipyard



NOSSAMAN LLP/Marina Business Associates

RECEIVED
South Coast Region

MAY 11 2009

CALIFORNIA
COASTAL COMMISSION



Dana Point
Shipyard

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Presentation of Dana Point Shipyard in the Context of:

1. Coastal Act Required Expansion of Marine Services,
2. Specific Response to 2.4.2009 URS/Cash Response to CCC Staff on Questions on Adequacy of Dana Point Shipyard,
3. Overall Dana Point Shipyard Proposal for Local Coastal Plan Amendment No. 1-08 & Comparison with City/County Plan





Dana Point
Shipyard

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Summary @ Glance

	Dana Point Shipyard Proposal ¹	County Proposal	
Recreational Boating Repair Allocation	2.6	1.6	
Parking Spaces	40	30	
Engine Removal Crane	YES	NO	
Mast Step Crane	YES	NO	
Handle All Size Boats in Harbor	YES	NO	
Accommodate Modern Boat Beams (>20')	YES	NO	
Do-It-Yourself Work Area Available	YES	NO	
Utilize Existing Shipyard Infrastructure	YES	NO	
Cost to Re-Construct or Expand Capability	1.5 M	8.0 M	
Water Quality Compliance with RWQCB	YES	NO	
Freelancers – Regulated for Water Quality	YES	NO	



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¹ Generally mirrors size and service level of shipyard operations today.

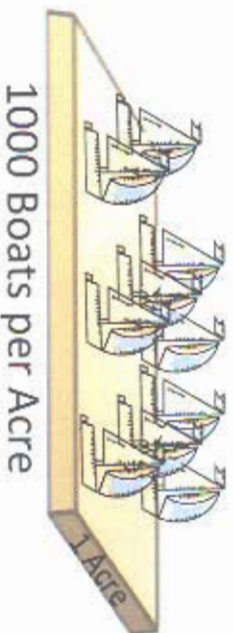


Dana Point
Shipyard

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Newport Harbor Shipyards

- Six Shipyards
 - 6.5+ Acres
 - 6400 Boats
-
- \approx 1000 Boats
per Acre



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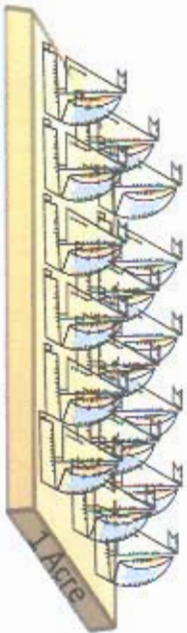


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Dana Point Harbor Shipyard

- One Shipyard
- 2.6 Acres
- 4500 Boats

☼ ≈ 1700 Boats
per Acre



1700 Boats per Acre



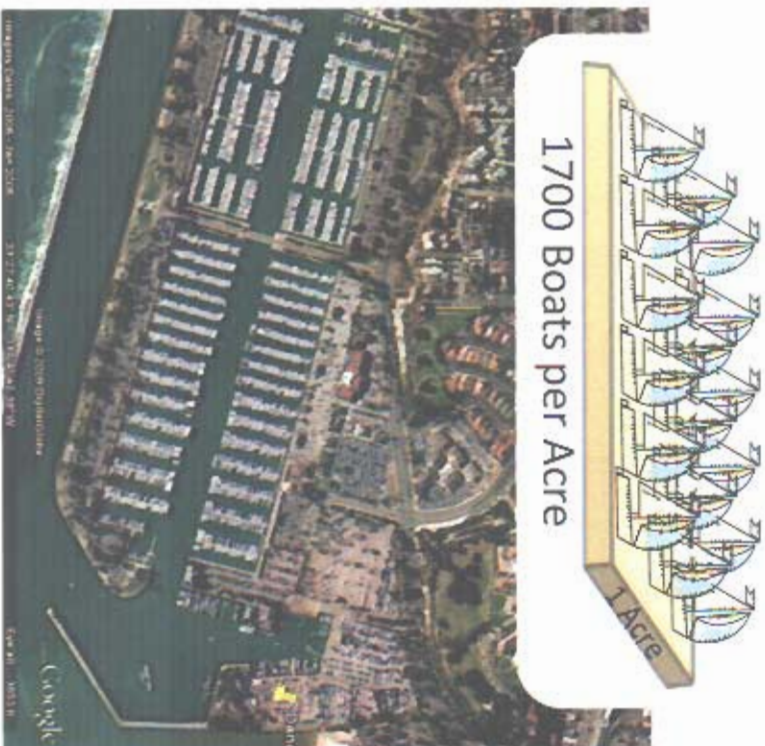
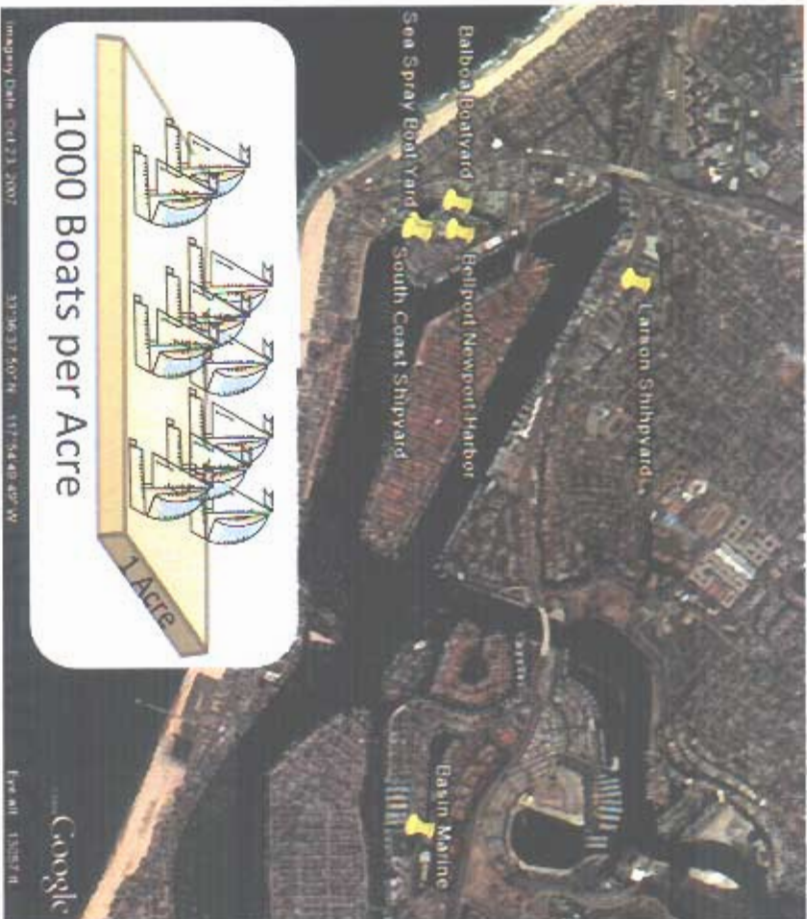


Dana Point
Shipyard

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Newport Harbor

Newport Harbor vs. Dana Point Harbor



Dana Point Harbor



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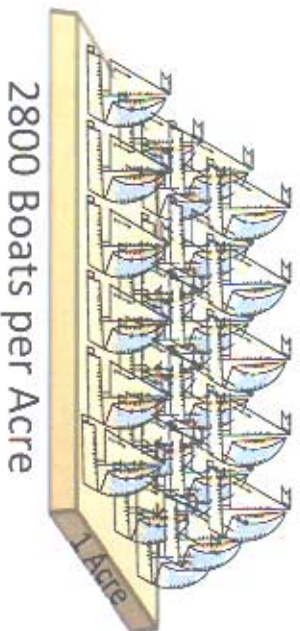
Dana Point
Shipyard

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- One Shipyard
- 1.6 Acres
- 4500 Boats



≈ 2800 Boats
per Acre



OC Dana Point Harbor Proposed Shipyard



NOSSAMAN LLP/Marina Business Associates



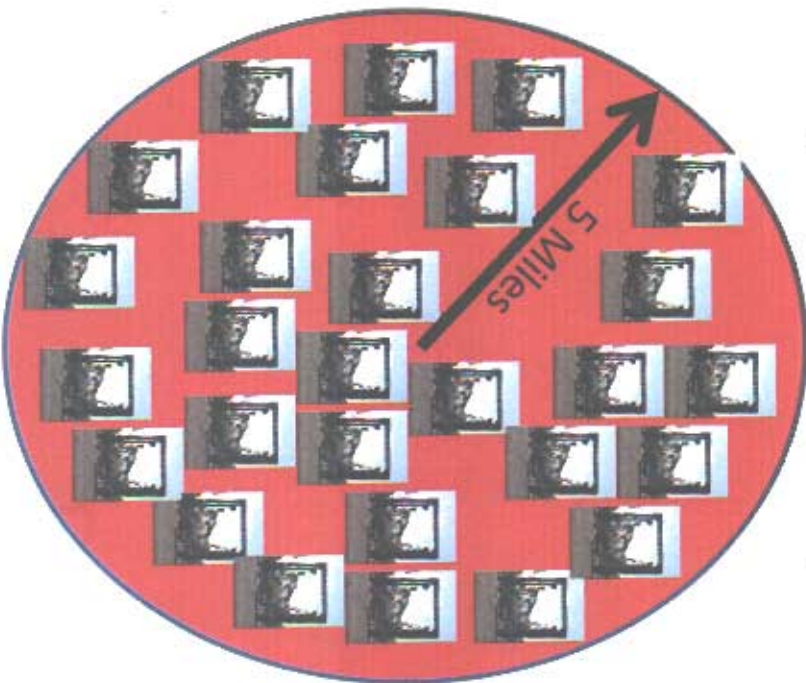
**Dana Point
Shipyard**

"Always here when you need us"

Boat Repair Facilities

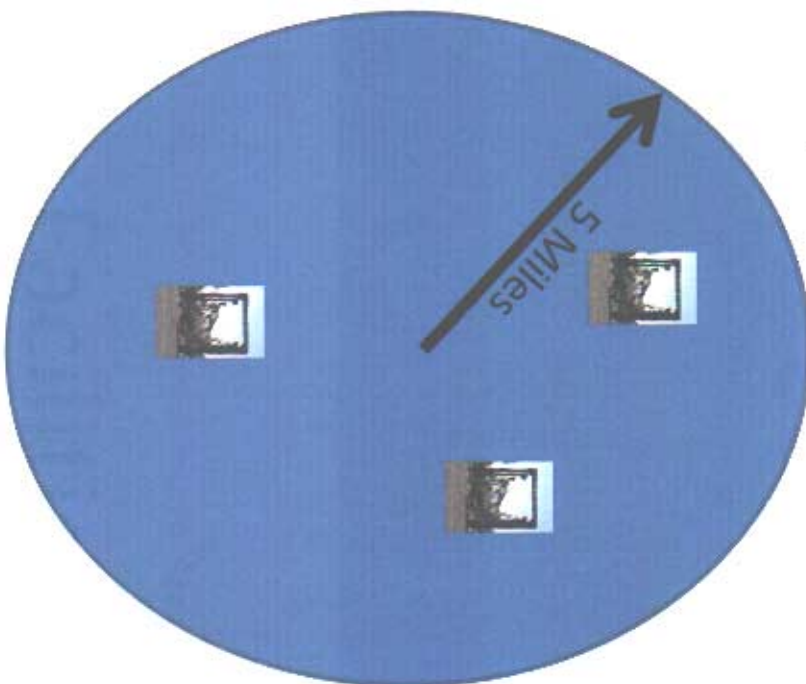
Newport Harbor

(27 w/in 5 mile radius)



Dana Point Harbor

(3 w/in 5 mile radius)



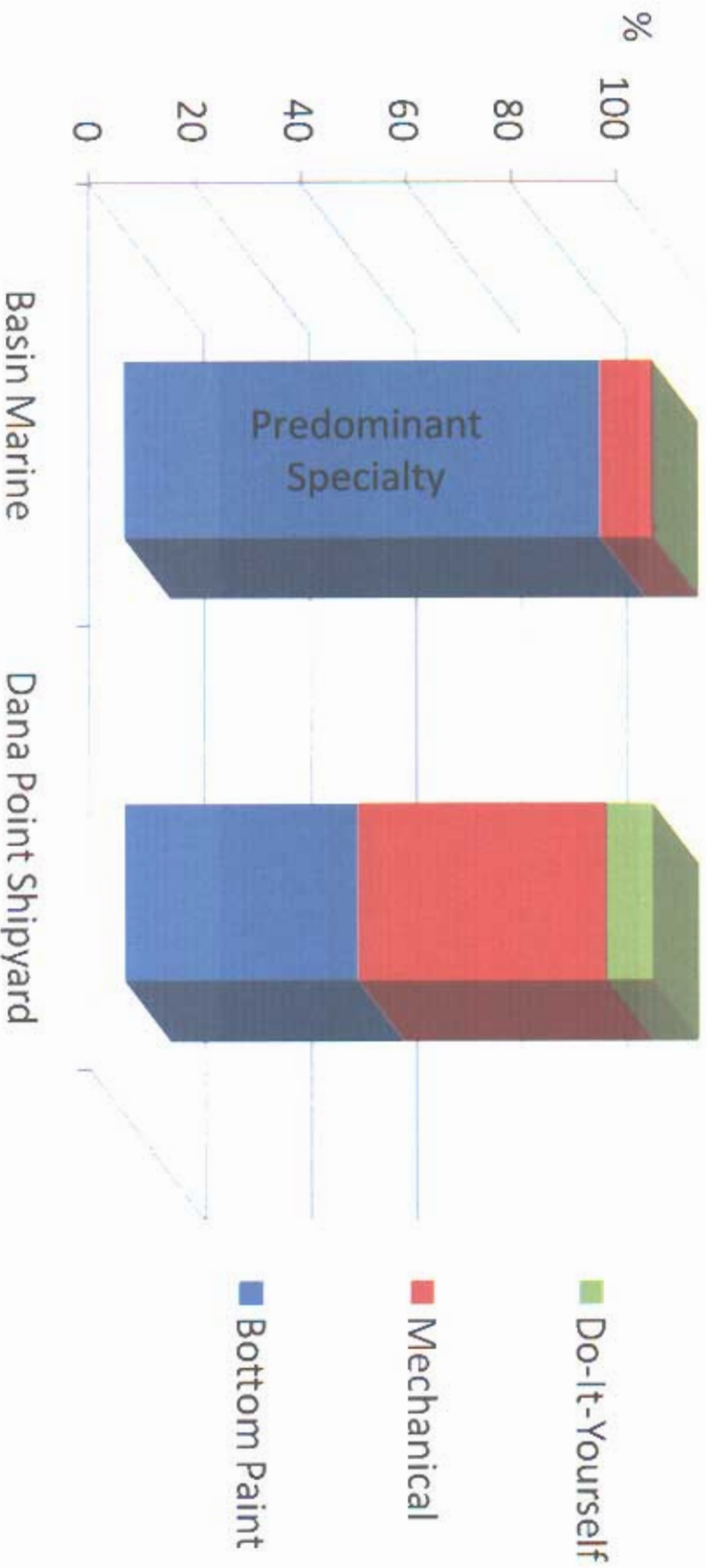
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Shipyard

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Two Very Different Shipyards



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Dana Point
Shipyard

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Analysis of "Efficiency"

Issue in URS Cash Report



* Longer period impacted by delays for parts, shipping and offsite mechanical work.



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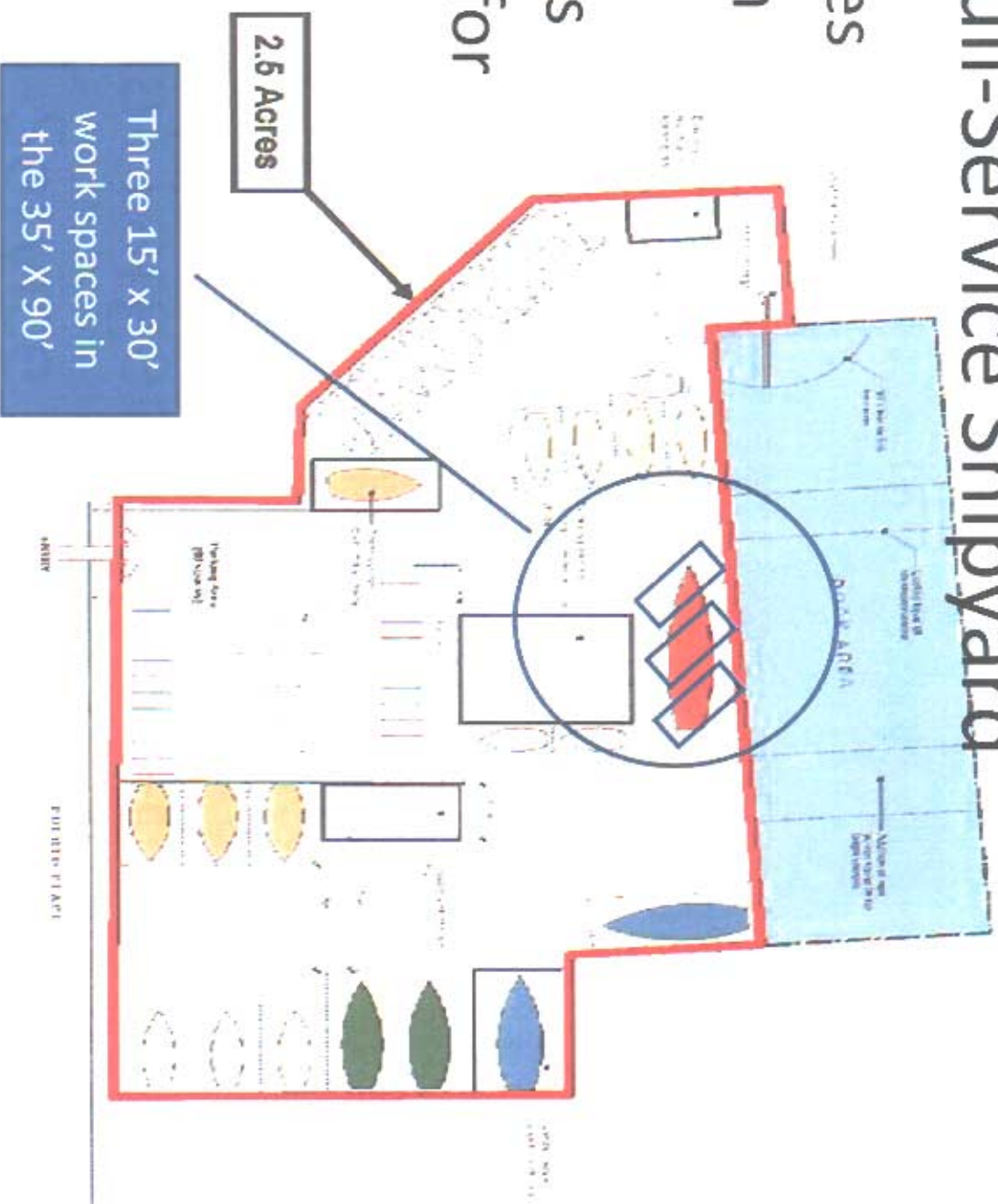


Dana Point
Shipyard

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What Larger Spaces Does for a Full-Service Shipyard

Accommodates
all vessels in
the Harbor
today and as
envisioned for
the future.



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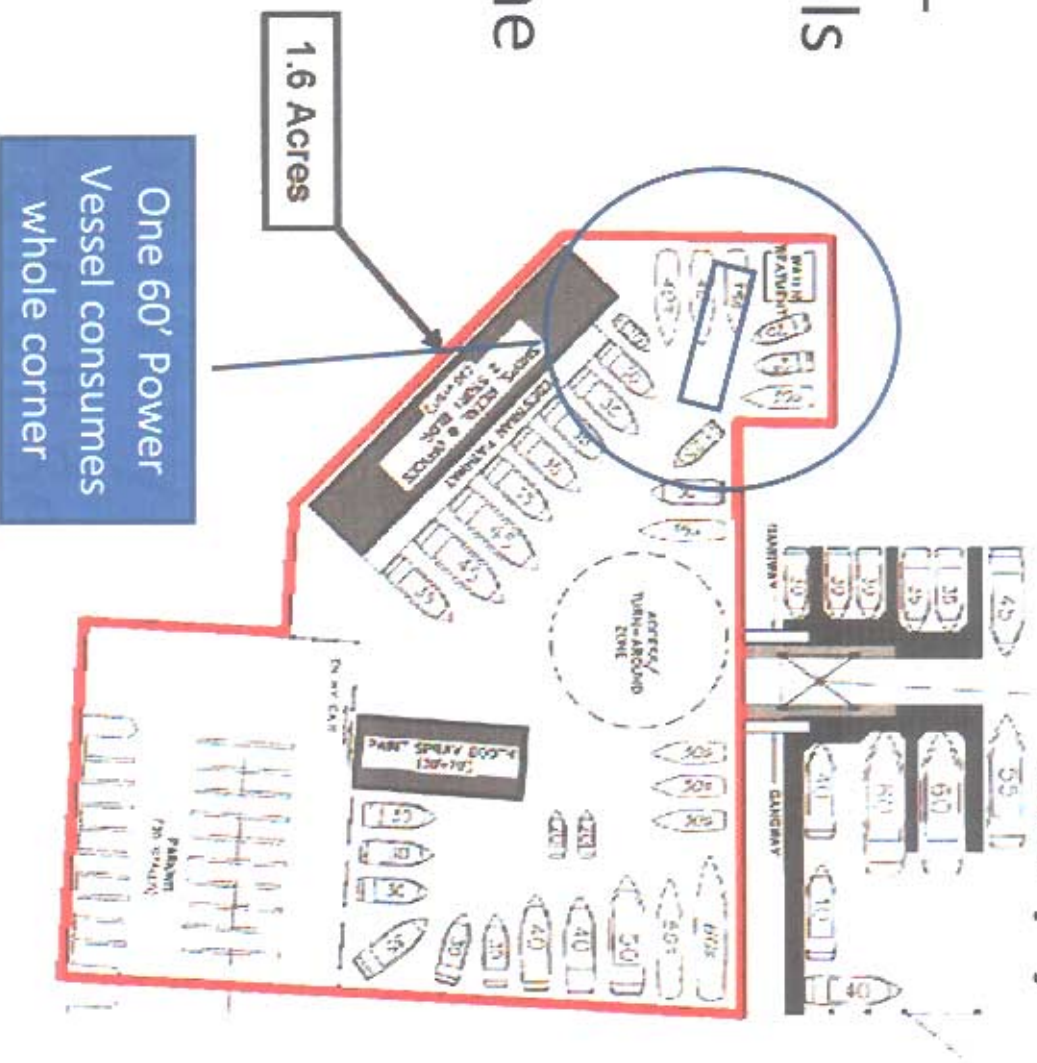


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What Too Many Small Spaces Does To a Full-Service Shipyard

DPT-MAJ-1-08
Exhibit #12
33 of 40

Does Not accommodate all vessels in the Harbor today and as envisioned for the future.





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- 16 of these spaces that are a logistical Rubix Cube!
- 10 narrow sailboat only spaces
- Not one 60' Power Vessel space
- Lack of maneuverability
- Will not Accommodate largest vessels in Harbor



Dana Point
Shipyard

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- Dana Point Shipyard
- Dry Boat Storage
- Jet Ski Rental, Sales and Repair & Kayak Storage, Sales and Rental

Dana Point Shipyard Today



NOSSAMAN LLP/Marina Business Associates



Dana Point
Shipyard

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Why 1.6 Acres OK Today

- Damaged Brand Image
 - "leakage" to Oceanside, Newport Beach, Long Beach
 - Personnel Changes
 - Procedural Changes
 - Brand Repair Will Take Years
- Can't Accommodate $\geq 38'$ Sail Boats¹
- Can't Accommodate $\geq 35'$ to $50'$ Power Boats (Tonnage Dependent)
- Can't Accommodate $\geq 18'$ Beam Vessels
- Can't Accommodate ≥ 40 tons Vessels
- Aggressive County Lease Structure

¹ Larger sailboats require de-rigging which most customers balk at.



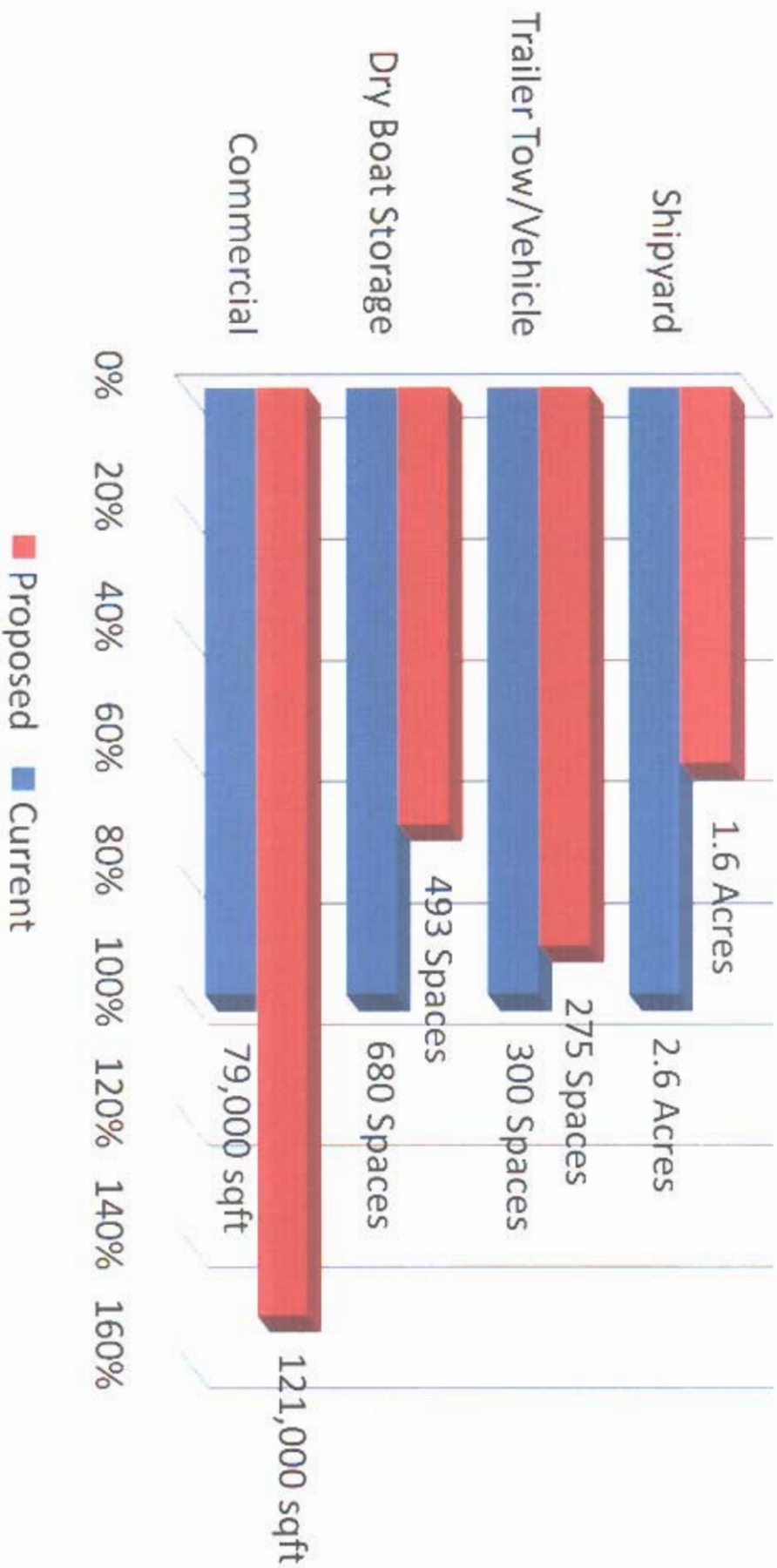
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LCPA 1-08 Land Use Changes



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Shipyard

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Dana Point Harbor Commercial Intensification –

East Cove

Commercial	Current Conditions	Proposed Conditions	
Hotel Rooms	134	220	→
Hotel Health Club & Sports	Small	Large	→
Hotel Conference	2 Small Rooms	12,000 SQ FT	→
Stores & Restaurants	79,000 SQ FT	123,000 SQ FT	→
Festival Plaza	0 SQ FT	34,000 SQ FT	→
Recreational Boating			
Dry Boat Storage	620-683	493*	→
Shipyard	2.6 Acres	1.6 Acres	→
Boater Parking (East Cove)	1 Acre	0.4 Acres	→
Trailer/Tow Vehicle Parking	300	275	→



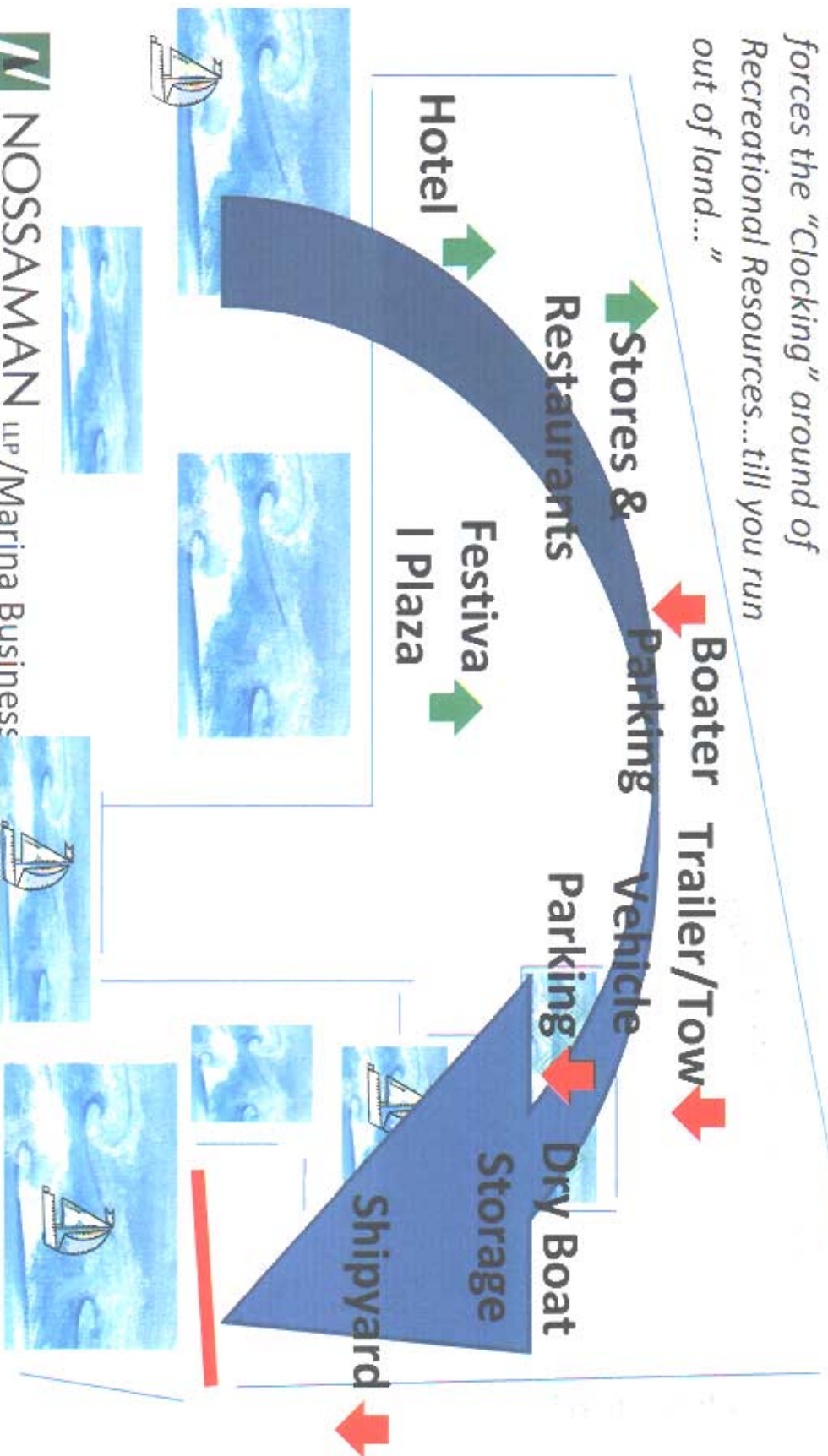
**Dana Point
Shipyard**

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Why the County Plan Forces a Smaller Shipyard?

Short Answer: Need more parking for Commercial Intensification

*"Expansion of Commercial Resources
forces the "Clocking" around of
Recreational Resources...till you run
out of land..."*



NOSSAMAN LLP/Marina Business



Dana Point
Shipyard

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Summary @ Glance

- Recreational Boating Repair Allocation
- Parking Spaces
- Engine Removal Crane
- Mast Step Crane
- Handle All Size Boats in Harbor
- Accommodate Modern Boat Beams (>20')
- Do-It-Yourself Work Area Available
- Utilize Existing Shipyard Infrastructure
- Cost to Re-Construct or Expand Capability
- Water Quality Compliance with RWQCB
- Freelancers – Regulated for Water Quality

Dana Point Shipyard Proposal ¹	County Proposal	
2.6	1.6	
40	30	
YES	NO	
YES	NO	
YES	NO	
YES	NO	
YES	NO	
YES	NO	
1.5 M	8.0 M	
YES	NO	
YES	NO	



NOSSAMAN^{LLP}/Marina Business Associates

¹ Generally mirrors size and service level of shipyard operations today.



May 22, 2009

COASTAL COMMISSION

RECEIVED
South Coast Region

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219
Attn: State Commissioners

EXHIBIT # 13
PAGE 1 OF 5

MAY 27 2009

CALIFORNIA
COASTAL COMMISSION**RE: Dana Point Harbor Revitalization Plan**

Dear Commissioners,

We received a copy of John P. Erskine's recent letter from Nossaman LLP to Coastal Commission Chairman Neely and the Coastal Commissioners dated May 8, 2009 regarding the Dana Point Shipyard. Nearly all of the issues brought forth in this recent letter have been raised in the past by other attorneys working on behalf of the shipyard operator, Anchor Marine.

We have consulted with OC Dana Point Harbor and we agree that the simple facts remain the same. Anchor Marine has a long term lease on 2.6 acres in Dana Point Harbor. This lease will expire in 2012. Since the lease inception, nearly 30 years ago, Anchor Marine has used only 1.2 acres (of their 2.6 acre site) as an actual shipyard, with an additional .4 acres of parking, for a total of 1.6 acres. The remaining 1.0 acres has been used for other non-shipyard related uses, and is currently surface trailer boat and vehicle storage.

The existing shipyard in Dana Point Harbor has the ability to adequately service the +/- 2400 boats in the Harbor's slips today (with an average slip size of +/- 30'), within it's 1.6 acre site footprint (1.6 acres includes the .4 acre parking lot). The proposed renovation of the Harbor's slips will likely reduce the number of slips in the Harbor to +/- 2,000, with an average size of 34'. It is the City's and OC Dana Point Harbor's position that a shipyard within the same 1.6 acre footprint (including parking) that exists today, can also have the ability to adequately service those +/- 2,000 boats in the future, even with a slightly higher average size. OC Dana Point Harbor has received letters (attached) from two different, highly experienced, southern California shipyard operators who are both familiar with Dana Point Harbor. They agree that the existing 1.6 acre site is large enough to support the repairs and maintenance of the existing boats in the Harbor today as well as those proposed in the future. This can be done while providing a full range of marine services without creating significant environmental impacts on water quality.

Harboring the Good Life

While Anchor Marine has had 30 years to expand their facility beyond the 1.2 acres they use for shipyard activities, they have chosen not to. Typically, when a business operates below their capacity, there is little reason to expand.

We received a revised Market & Operations Analysis, a response to the County's URS/Cash study and a PowerPoint presentation comparing the Dana Point Shipyard with Newport Beach shipyards as attachments to John P. Erskine's May 8, 2009 letter. We have reviewed these documents, and we have a number of questions and concerns regarding the accuracy of the information and opinions provided. While we could prepare a lengthy list of these items, including major discrepancies between the information provided in their Market Analysis Review and their PowerPoint presentation, we feel that the overriding issue is, and should be, whether or not the existing 1.6 acre footprint is large enough to support the repairs and maintenance of existing and future boats in the Harbor. Based on the information we have received from other successful shipyard operators, and research we have performed by comparing the Dana Point Harbor shipyard to other comparable facilities, we are confident that the 1.6 acre footprint (including parking) is appropriate for the continued operation of a shipyard in Dana Point Harbor.

Sincerely,



Kyle Butterwick
Director of Community Development

cc: Brad Gross, Director, OC Dana Point Harbor Department
Attachments

COASTAL COMMISSION

EXHIBIT # 13
PAGE 2 OF 5

BELLPORT
Bellport Newport Harbor Shipyard

May 21, 2009

Paul C. Lawrence
Operations Mgr
OC Dana Point Harbor
24650 Dana Point Harbor Drive
Dana Point, CA 92629

Dear Paul,

We currently operate a shipyard located in Newport Harbor. Our shipyard is situated on 27,000 sq. ft. In addition, our parking lot is .75 acres shared with other businesses. We service roughly 800 vessels each year. These vessels range in size from 20 to 150 feet. Our lift has a capacity of 90 tons and a maximum beam width of 24.

We understand that Anchor Marine Shipyard in Dana Point Harbor currently supports Dana Point Harbor's $\pm 2,400$ vessels with an average length of 30'. After evaluating the OC DPH proposed slip mix, likely to include $\pm 2,050$ vessels with an average length of $\pm 34'$, and after evaluating the size of Anchor Marine Shipyard, BellPort is confident that the ± 1.2 acre shipyard site and .4 acre parking lot allows ample space for a Shipyard to adequately provide boat maintenance and repair needs to vessels under the proposed slip mix.

With the Revitalization plans underway, BellPort would like to offer our services to operate and manage the shipyard in Dana Point. Given our proven experience in Newport Harbor, familiarity with the space in Dana Point, and vast understanding of the local market, we are certain that BellPort can provide unsurpassed services to Dana Point Harbor boaters.

Thank you,



Jesse Salem
Vice President of Shipyard Operations
BellPort Newport Harbor Shipyard

COASTAL COMMISSION

EXHIBIT # 13
PAGE 3 OF 5



829 Harbor Island Drive • Newport Beach, California 92660 • Phone (949) 673-0360 • Fax (949) 673-0625

January 20, 2009

Mr. Paul Lawrence
Operations Manager
OC Dana Point Harbor
24650 Dana Point Harbor Drive
Dana Point, CA 92629

Dear Mr. Lawrence:

I would like to introduce myself, I am president of our family held corporation and we are now in our third generation. My father Don started Basin Marine in 1939, and now my son Derek is head of our daily operations.

I understand that the revitalization plans for Dana Point include the overhaul of the shipyard which would be of a size of 1.6 acres. What a dream that would be as it is 2 1/2 times larger than our yard of 28,000 square feet!

Our facility in Newport Beach includes 7 work slips, 3 shops, 90 foot boom crane, a 50 ton Marine Travelift, ships chandlery and a complex water treatment system. Our parking of 14 spaces is shared with the city's Balboa Yacht Basin. We average 1200 haul outs a year, employ about 30 full time workers, and usually have 3 to 4 subcontractors on our premises daily.

We are familiar with the current Anchor Marine shipyard operation which is situated on a plus or minus 1.2 acre site with .4 acre parking. Based upon our experience the existing site size is large enough to support the boat repairs and maintenance of the plus or minus 2400 vessels in Dana Point Harbor today with an average length of 30 feet. The new plan of OC DPH proposes about 2050 slips with the average vessel being 34 feet. We feel comfortable in stating that a facility of this size should be able to adequately support the maintenance and repairs of the boaters in Dana Point Harbor today and as proposed in the future.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 4 OF 5

Page 2
OC Dana Point Harbor
January 20, 2009

In closing I would be remiss if I did not "throw my hat into the ring" and offer our services to manage and operate a successful shipyard in Dana Point as envisioned in the Revitalization Plan. We believe that given the amount of space available, and the area market, combined with our 70 years of expertise, we would easily be able to accommodate all boaters interested in repairs and service in the proposed facility.

Sincerely,

BASIN MARINE, INC.



David L. New
President

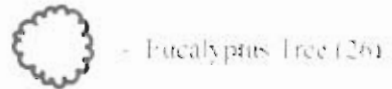
COASTAL COMMISSION

EXHIBIT # 13
PAGE 5 OF 5

KEY MAP



LEGEND



- Eucalyptus Tree (26)



- Coral Tree (3)



- Fan Palm (9)

10

- Number of Nests in Tree

Note: Only trees over 15 feet in height are shown

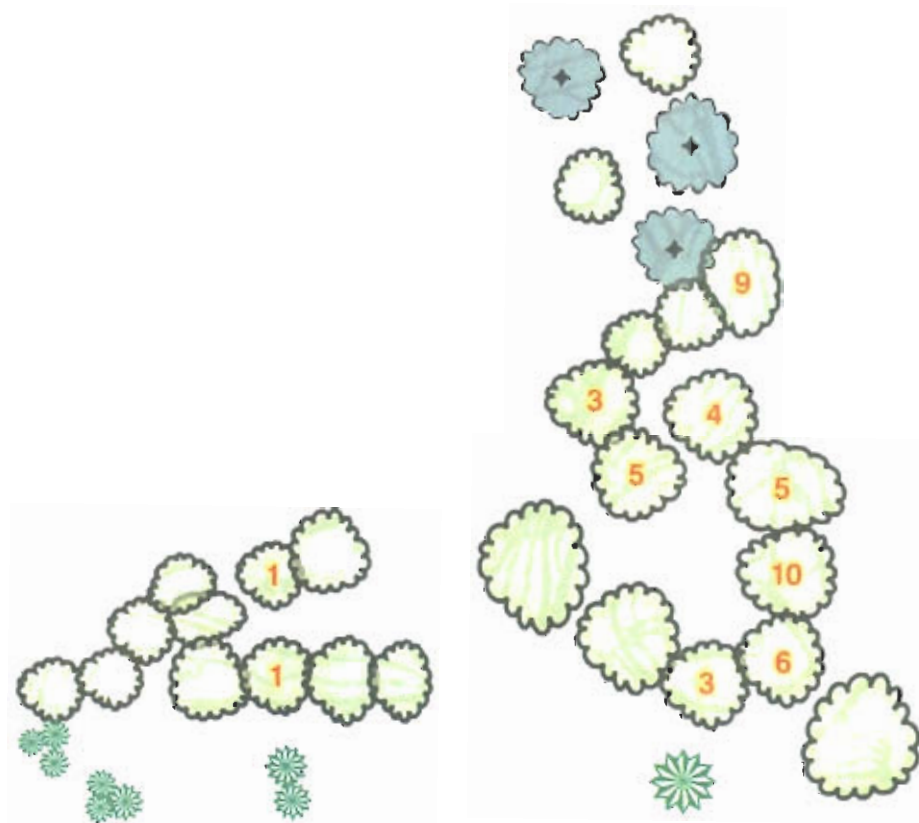


FIGURE 3

LSA



COASTAL COMMISSION

EXHIBIT # 14

PAGE 1 OF 1

Dana Point Harbor
Coastal Commission Support
Dana Point Harbor Herons

Boaters for Dana Point Harbor - Petition

List of **Amendments** to LCPA 03-06 to be considered by California Coastal Commission

- **Maintain existing dry boat storage** capacity. Do not build a 9,000 square foot retail store where boats are stored on trailers. The store, if it must be built, should be moved to the optional 10,000 square foot restaurant pad in the Commercial Core. We believe this to be a Negative Declaration*
- **Maintain existing Land Use allocation for Shipyard Operations**, including Jet Ski sales and service, kayaks rental and storage and dry boat storage. Scale back Commercial Expansion to eliminate encroachment and or elimination of recreational boating resources. **Negative Declaration***
- **Maintain the existing capacity of dry boat storage** available today in planning area 2 and the North end of planning area 1, estimated to be 620 spaces. Scale back Commercial Expansion to eliminate encroachment and or elimination of recreational boating resources. **Negative Declaration***
- **Restore and maintain dedicated boater parking** at the original design level. Re-define "multi-use" parking to protect slip renters as opposed to restaurants and stores. Scale back Commercial Expansion to eliminate encroachment and or elimination of recreational boating resources. **Negative Declaration***
- **Restore and maintain Launch Ramp Trailer/Tow Vehicle Parking** functionality. Restore original geometry to optimize compliance with Department of Boating and Waterways Design Guidelines. Increase size of parking spaces to accommodate typical use (Proposed design is minimum allowed). Scale back commercial core expansion, do not move "The Street of the Golden Lantern" and do not place parking garage in trailer/tow vehicle parking area. **Negative Declaration***
- **Retain "Park Like Setting"** by scaling back commercial core expansion and reducing maximum building height increase. Current zoning maximum is 35' with a proposed increase to 65' the park like setting will be eliminated. Reduce increase to 45'. **Negative Declaration***

*A change that is considered to be a Negative Declaration would allow the process to move forward without having to re-execute the California Environmental Quality Act or re-circulate anything for approval at the County of Orange or City of Dana Point.

*APPROXIMATELY
340 INDIVIDUALS
HAVE SIGNED THIS
PETITION

COASTAL COMMISSION

EXHIBIT # 15
PAGE 1 OF 1

Page 1

Note: All Duplicates have been Removed. Completed Contact Information available on Request.