

CALIFORNIA COASTAL COMMISSION

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September 23, 2009

TO: Commissioners and Interested Persons

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

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

SUMMARY OF LCP AMENDMENT REQUEST NO. 1-08

The City of Dana Point presently has two groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated that still apply to the central geographic area of the City. The central geographic area is generally located between Monarch Beach to the north and Capistrano Beach to the south, including the Dana Point Harbor area that is the subject of the proposed LCP Amendment. These older documents have generally been referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development Conservation Plan, and the Dana Point Town Center plan which apply to those areas of the City that are not covered by the 1986 LCP. These more recent documents are referred to as the '1996' LCP¹.

In the proposed City of Dana Point Amendment request, the City proposes to amend the Local Coastal Program Land Use Plan to incorporate the proposed Dana Point Harbor Revitalization Plan (replacing those sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP), that would establish new land use designations and boundaries throughout the harbor; expand allowable development by approximately 153,000 square feet (all uses) including commercial development (+7,300 square feet retail/+50,000 square feet restaurant), enlarged hotel (136 rooms to 220 rooms) plus conference facilities, new marine retail (9,100 square feet), among other expanded uses; change parking requirements; reduce space allocated for surface boat storage; and change height limits to allow for 65 ft. high dry stack storage building for 400 boats and up

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

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

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

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

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

County/City

Commission and County/City staff had been working together to produce a Land Use Plan that was acceptable to all parties for the June Commission meeting. There were a number of issues where the County/City staff and Commission staff disagreed, but basically found common ground through the modifications suggested by Commission staff and made in the addendum and at the June hearing prior to its postponement by the Commission. Changes have been made to several of the suggested modifications since the June hearing as indicated in the chart at the beginning of the staff recommended suggested modifications (Exhibit 17). Although Commission and County/City staff have met several

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

times since the June postponement, we were not able to meet again after finalizing the suggested modifications to determine areas of remaining disagreement, if any. However, there still remain issues that members of the public disagree with concerning the County/City original submittal and as modified herein. The following is a summary of the areas of controversy between the County/City and Commission staff and some segments of the public regarding the proposed Land Use Plan as modified by the suggested modifications as originally recommended by staff at the June Commission meeting and as subsequently further modified.

Boat Slips

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

Parking Ratio for Boat Slips and Commercial Core Parking

The Dana Point Harbor Revitalization Plan would allow a 0.6 parking ratio per boat slip. A parking ratio of 0.75 parking spaces per slip is currently being used in other LA and Orange County harbors. Prior to 1980, Dana Point Harbor required 0.75 parking spaces for each slip up to 30 ft. in size; 1.2 spaces per slip 30 ft. to less than 45 ft. and 1.6 parking spaces per slip 45 ft and greater. The County/City justifies the proposed reduced boater parking rate based on Department of Boating and Waterway guidelines, a 1996 study that indicated that Dana Point's parking ratios were higher than other marinas at that time, and a summer 2006 parking survey that found that there would be adequate boater parking, even during peak summer weekends (except for major holiday weekends), if the ratio were

lowered to 0.60 spaces per slip. Concerns from the public have been raised that a 0.6 parking ratio is being proposed to allow the development of the Commercial Core visitor-serving commercial development, which they see as a lower priority use. Commission staff supports the reduction in the boater parking ratio based on the information submitted by the County/City showing that the reduced parking ratio is adequate to meet the existing and future boater parking demand and the requirement that the Commercial Core development provide parking for its use. Further, the County/City is required to assess the need for implementation of non-automobile transit services (water taxi, shuttle and Tri-City Trolley) should parking become a problem. Additionally, boaters are concerned with the County/City proposed policy that would allow boater parking up to 1,000 ft. from the docks they serve. Policy 6.2.5-6, (page I-6.13, Ex. 17) reduces the maximum distance to 600 ft. and encourages boater parking spaces to be located within 300 ft. of the docks.

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

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

Visual Resources

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

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

Click on the links to go to the exhibits.

EXHIBITS

- 1) Location Map
- 2) Dana Point City Council Resolution No. 06-09-13-06
- 3) Dana Point City Council Ordinance No. 06-08
- 4) Letter from the City of Dana Point dated November 7, 2007
- 5) EIR Table 3-1 Existing and Proposed Land Use Summary
- 6) Existing Conditions Site Map
- 7) Planning Area Map
- 8) Land Use Plan Map
- 9) Current Anchor Marine Lease Boundary 2.6 Acres Map
- 10) Dana Point Harbor Existing and Proposed Acreages Table
- 11) Letter from California State Lands Commission dated January 13, 2009
- 12) Letter from Nossaman, LLP dated May 8, 2009
- 13) Letter from the City of Dana Point dated May 22, 2009
- 14) LSA Map of Southern Portion of Planning Area 1
- 15) Boaters for Dana Point Petition dated May 22, 2009
- 16) Dana Point Harbor Revitalization Plan and District Regulations dated September 2006
- 17) Dana Point Harbor Revitalization Plan Land Use Plan Component dated May 2009
- 18) Dana Point Harbor Parking Zones/Requirements Information (Existing and Proposed)
- 19) Dana Point Harbor Parking Zones/Requirements Graphic Showing Both Existing and Proposed Parking
- 20) Dana Point Harbor Alternative 3.50 Proposed Slip Layout Graphic

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

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

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

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

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

STANDARD OF REVIEW

The standard of review for the proposed Amendment to the LCP-Land Use Plan is

consistency with the Chapter 3 policies of the Coastal Act.

SUMMARY OF PUBLIC PARTICIPATION

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

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

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

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

ADDITIONAL INFORMATION

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

I. STAFF RECOMMENDATION

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

A. Denial of the Land Use Plan Amendment as Submitted

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

STAFF RECOMMENDATION TO DENY:

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

RESOLUTION TO DENY:

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

B. Approval of the LUP Amendment with Suggested Modifications

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

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

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

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

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

II. SUGGESTED MODIFICATIONS

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

III. FINDINGS

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

A. PROJECT LOCATION AND AMENDMENT DESCRIPTION

1. Project Location

Dana Point Harbor is approximately 276.8 acres, owned and operated by the County of Orange and located entirely in the southern portion of the City of Dana Point (Exhibit #1 and #6). The Harbor is bordered by the Pacific Ocean to the south, Dana Point Headlands and the Old Cove Marine Life Preserve to the west, Doheny State Beach to the east and a variety of commercial, hotel, residential and public park uses to the north. Vehicular access to the Harbor is provided by Dana Point Harbor Drive, Street of the Golden Lantern and secondary access via Cove Road. Dana Point Harbor is a man-made County of Orange regional recreational facility built in a cove formed by the headlands of Dana Point to the north in Capistrano Bay. The Harbor is constructed entirely on State tidelands that were granted to the County of Orange. The subject Revitalization Plan applies only to filled and unfilled tidelands; there are no non-tidelands within the subject LCP area. Although the uplands are filled tidelands and would normally be under the Commission’s jurisdiction, the Commission has delegated to the City permit authority for the filled tidelands pursuant to Section 30613 of the Coastal Act. The Commission retains original

coastal development permit jurisdiction over unfilled tidelands. The Harbor construction was completed in the early 1970's and with the exception of the Dana Wharf buildings, routine maintenance and some other minor improvements, the County has not remodeled or constructed any new facilities since that time. Beginning in the late 1990's, planning for the Harbor's revitalization began.

1. Land Use Plan (LUP) Amendment

In the proposed City of Dana Point LCP Amendment request, the City proposes to amend the Local Coastal Program Land Use Plan to incorporate the proposed Dana Point Harbor Revitalization Plan (replacing sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP), that would establish new land use designations and boundaries throughout the harbor; expand allowable development by approximately 153,000 square feet (all uses) including commercial development (+7,300 square feet retail/+50,000 square feet restaurant), enlarged hotel (136 rooms to 220 rooms) plus conference facilities, new marine retail (9,100 square feet), among other expanded uses; change parking requirements; reduce space allocated for surface boat storage; and change height limit to allow for 65 ft. tall dry stack storage building for 400 boats and up to 60 ft. tall commercial buildings (Exhibit #5). Existing and proposed acreages by use category are listed in Exhibit #10. Proposed LCP Amendment Request No. 1-08 was submitted for Commission certification by City Council Resolution No. 06-09-13-06, which has been included as Exhibit #2. In addition, Ordinance No. 06-08 approving the change to the Dana Point Specific Plan and Zoning Code has been included as Exhibit #3.

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

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

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

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

This LCP Amendment will only serve as a planning document and will not approve any specific project components. Subsequent Coastal Development Permits (CDP's) from the City will be necessary to approve any project components to carry out the County/City's vision of the revitalization plan. The submitted LCPA is a project driven LCPA, as significant planning has already taken place in anticipation of approval of the LCPA and then immediate processing of permits for development of the County/City's anticipated project components.

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

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

B. LAND USE PLAN AMENDMENT

1. DENIAL of the LUP Amendment as Submitted

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

The Dana Point Harbor Revitalization Plan document originally submitted by the City (dated September 2006) purports to contain the Land Use Plan Amendment for the Dana Point Harbor. Chapter 1 of the document is identified as the Land Use

Plan Amendment and contains a narrative description of twelve (12) Planning Areas; a narrative description of 'design themes' including architecture and landscaping; a narrative description of infrastructure and utility improvements; and finally a narrative description of construction phasing. While this chapter provides a narrative about these Planning Areas, this chapter fails to identify the allowable land use designations typically accompanied with an LUP.

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

Furthermore, except for Exhibit 1-1 in the Land Use Plan Amendment, there are no other exhibits identifying important resource areas, public access and recreation areas, among other exhibits that would be typical within a Land Use Plan. There are also a number of Coastal Act issues that need to be addressed in an LUP that are not addressed such as the fill of coastal waters, hazards (e.g. flooding, tsunami, erosion, sea level rise, etc.), avoidance/minimization of protective devices, protection of marine resources (e.g. eelgrass), scenic resources including important landforms, and public view points, corridors, etc., just to identify a few. Thus, the Commission has determined that this Land Use Plan Amendment document would not function as a policy document by which the City could review development proposals. Thus, as detailed more fully below, the Commission must deny the proposed land use plan amendment as submitted as it does not contain sufficient policies or standards by which to carry out the requirements of Chapter 3 of the Coastal Act.

a. Tidelands and Submerged Lands

Section 30213 of the Coastal Act states:

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

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30224 of the Coastal Act states:

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

Section 30234 of the Coastal Act states:

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

The protection of Tidelands and Submerged Lands is an important aspect of the Coastal Act. Section 30213 of the Coastal Act states, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30220 of the Coastal Act states, in part, that coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use. Section 30221 of the Coastal Act states, in part, that oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already

adequately provided for in the area. Section 30224 of the Coastal Act states, in part, that increased recreational boating use of coastal waters shall be encouraged and that non-water-dependent land uses shall be limited. Section 30234 of the Coastal Act states, in part, that facilities that serve commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Tidelands and submerged lands are subject to a public trust that, among other things, limits their use to navigation, fishing, public access, water-oriented recreation, open space and environmental protection, and incidental commercial use, which are uses that are highly regarded in the Coastal Act. Thus, these lands must be protected in order to protect the general public's use of these areas to gain access to and enjoy the coast.

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

b. Coastal-Dependent/Related Development

Section 30213 of the Coastal Act states:

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

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

Section 30220 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that

could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

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

Section 30224 of the Coastal Act states, in part:

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

Section 30234 of the Coastal Act states:

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

Section 30255 of the Coastal Act states:

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

The protection of Coastal-Dependent/Related Development is an important aspect of the Coastal Act. Section 30213 of the Coastal Act states, in part, that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Section 30220 of the Coastal Act states, in part, that coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use. Section 30221 of the Coastal Act states, in part, that oceanfront land suitable for recreational use shall be protected for

recreational use and development unless present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. Section 30223 of the Coastal Act states, in part, that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. Section 30224 of the Coastal Act states, in part, that increased recreational boating use of coastal waters shall be encouraged and that non-water-dependent land uses shall be limited. Section 30234 of the Coastal Act states, in part, that facilities that serve commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Section 30255 of the Coastal Act states, in part, that coastal-dependent development shall have priority over other developments on or near the shoreline. Coastal-Dependent/Related Development has priority over other development near the shoreline as stated in the Coastal Act. In addition, the Coastal Act states that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided and also recreational boating uses shall be encouraged and non-water dependent uses shall be limited. The harbor provides a unique area where such Coastal-Dependent/Related Development should be located. This in turn provides opportunities for the general public to enjoy the coast.

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

c. Visitor-Serving Commercial Development

Section 30213 of the Coastal Act states:

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

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

Section 30221 of the Coastal Act states:

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

Section 30222 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

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

Section 30250 of the Coastal Act states:

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

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

under the Coastal Act. This type of use is preferred because it provides opportunities for the general public to enjoy the unique experience available only along the coast. The Dana Point Harbor is a favorable location to provide amenities that will enhance the general public's access to the coast.

Protection of Visitor-Serving Commercial Development should be a primary goal associated with any LUP. The LUP submitted by the City contains land use designations with land uses that do encourage the provision of visitor-serving development. For example, there are "Day Use Commercial" and "Visitor Serving Commercial" land use designations that encourage retail, restaurant, and visitor accommodation uses. However, except for those provisions, and various references in narrative to protecting and enhancing the visitor serving capacity of the harbor, the proposed LUP Amendment does not provide policies that are adequate to protect and enhance Visitor-Serving Commercial Development. Policies are necessary that identify the preferred location of visitor serving development in the harbor; and provide guidance as to physical design features that will enhance visitor serving function. Therefore, the submitted Dana Point Harbor Revitalization Plan is inconsistent with Sections 30213, 30221, 30222, 30223 and 30250 of the Coastal Act because it fails to provide policies that would protect and enhance Visitor-Serving Commercial development in the coastal zone. Therefore, the LUP Amendment must be denied as submitted.

d. Lower-Cost Overnight Accommodations

Section 30210 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

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

Section 30221 of the Coastal Act states:

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

Section 30222 of the Coastal Act states:

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

Section 30255 of the Coastal Act states:

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

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

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

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

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

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

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

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

e. Limited Use Overnight Visitor Accommodations

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

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

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

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

the units, rooms, lots, parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right for a specified period of time to exclusive use to all or a portion of the facility. A more detailed definition that encompasses all the possible known types of these kinds of facilities should be included in the LUP.

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

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

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

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

inconsistent with the Chapter 3 policies of the Coastal Act and therefore must be denied.

f. Transit/Smart Growth

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

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

Section 30252 of the Coastal Act states:

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

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

New development shall:

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

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

For example, developments could locate and design building entries that are convenient to pedestrians and transit riders. Policies need to encourage development to be designed accordingly.

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

g. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

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

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to

mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214 of the Coastal Act states:

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

Section 30252 of the Coastal Act states, in part:

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

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

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

The LUP submitted by the City does contain a 'Circulation and Access' section that discusses in general terms how the City intends to address public access and circulation in the Harbor, mostly with an emphasis on how it will do so in the Commercial Core area. The plan also contains Coastal Act policies regarding public access and recreation. However, the proposed LUP Amendment would delete existing public access policies relative to the harbor that are in the existing certified LUP and does not replace them. In addition, the LUP does not provide other policies sufficient to protect, enhance and provide public access and recreation in the harbor. For instance, there are no policies describing or graphics depicting existing access to be protected or enhanced/provided.

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

h. Coastal Resource Protection

Section 30210 of the Coastal Act states:

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

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states:

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (4) *Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing Intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource-dependent activities.*

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

Section 30240 of the Coastal Act states:

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

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

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

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

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

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

i. Locating New Development

Section 30235 of the Coastal Act states:

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

Section 30250 of the Coastal Act states, in part:

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

coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30252 of the Coastal Act states, in part:

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

Section 30253 of the Coastal Act states:

New development shall do all of the following:

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

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

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

(d) Minimize energy consumption and vehicle miles traveled.

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

Section 30254 of the Coastal Act states:

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

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

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

Section 30251 of the Coastal Act states, in part, that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of

public importance. Section 30252 of the Coastal Act states, in part, that the location and amount of new development should maintain and enhance public access to the coast. Section 30253 of the Coastal Act state, in part, that new development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard; 2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; 3) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development; 4) minimize energy consumption and vehicle miles traveled; and 5) where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

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

Hazards

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

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

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

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

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

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

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

Paleontological and Archaeological Resources

Section 30244.

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

Preservation Officer, reasonable mitigation measures shall be required.

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

Visual Resources

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

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

2. APPROVAL of the LUP Amendment if Modified as Suggested

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

a. Tidelands and Submerged Lands

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

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

However, some uses that the State Lands Commission staff has determined are consistent with the Tidelands Grant³ need to be strictly controlled to also be consistent with Coastal Act requirements. There are presently two yacht clubs (i.e. the Dana Point Yacht Club and Dana West Yacht Club) and one boating association (Aventura Sailing Association) that occupy facilities within the harbor⁴. All of these existing facilities are located on the island area (Planning Area 4). The proposed Revitalization Plan includes provisions that allow the expansion of two of these existing facilities. The Dana Point Yacht Club currently has 12,400 sq.ft. and would be allowed to expand to 18,000 sq.ft. (+5,600 sq.ft.) and the Dana West Yacht Club has 3,600 sq.ft. and would be allowed to expand to 8,600 sq.ft. (+5,000 sq.ft.). No allowance is made for expansion of the Aventura Sailing Association building. However, the proposed Revitalization Plan also includes 'yacht clubs' as an allowable use in other commercial districts in the harbor, although there are no proposals known to the Commission to include additional yacht clubs in forthcoming development proposals. Nevertheless, the potential expansion of existing and construction of new private (membership) boating/yacht clubs or associations raises concerns about conflicts with the Coastal Act. The subject yacht clubs require membership (including sign-up fees and monthly dues) and sponsorship to join (i.e. other existing members must agree to sign your application prior to its consideration by the club). Thus, unlike other private commercial ventures in the harbor like hotels, restaurants, and retail shops, where any member of the public can utilize them, the use of the yacht club facilities is limited to

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

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

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

Additionally, an added policy would prohibit new boating/yacht clubs or associations that require membership and/or fees for enrollment/initiation and/or recurrent fees since those uses hinder general public access to the water and would not represent a lower cost recreational use consistent with Section 30213 of the Coastal Act. In addition, such limitations protect oceanfront land for recreational use consistent with Section 30221 of the

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

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

b. Coastal-Dependent/Related Development

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

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

Following the postponement of the June Commission hearing the County/City held additional public meetings and decided on a final Harbor alternative, known as Alternative 3.5O (Exhibit 20). While Alternative 3.5O significantly reduces the loss of small slips (less than 30' in length) from the previous proposal, the new alternative still results in a significant net loss of

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

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

As stated, while the current proposal is an improvement over the proposal that was before the Commission in June, it would still allow a significant net loss of slips (209) and a loss of 323 slips under 30 feet. Suggested modification 4.2.2-6 (page 1-4.5) requires that the goal of the Harbor improvement plan be no net loss of slips. The County indicated that one of its 26 design alternatives considered was the reconstruction with the same number and size of slips. According to the County, that design resulted in the loss of 155 slips overall, including ADA and current engineering design standards. Under the suggested modification, if slips are removed in order to meet ADA or current engineering requirements or to meet the demand for larger slips, slips would need to be replaced within new berthing areas within the harbor, perhaps within the "safe harbor" area, if feasible. If this proves to be infeasible, the net loss of slips shall not exceed 155 slips.

The Commission agrees with the analysis of the reason for the loss of slips; but is concerned with the actual number of slips being removed without a commitment to the goal of no net loss of slips, if feasible. If it is not feasible to retain the existing number of slips in the Harbor, providing dry boat storage opportunities within the Harbor must be considered before a reduction in the number of existing slips can be allowed. Thus, a policy has been added that allows the removal of any existing slips only pursuant to an approved CDP for marina redevelopment that addresses impacts associated with the loss of slips and full operation of the boat storage facility (Policy 4.2.2-10). At that time the Commission will also consider whether the construction and full operation of the planned 400 space dry stack boat storage facility has occurred and its impact on small boating opportunities. Policies have also

been added to deal with the loss of small slips. Policy 4.2.2-6 also requires the average slip length not to exceed 32 feet from its current 30 feet.

These policies are found on Page of the revised LUP (Exhibit 17 of the staff report) and state:

Policy 4.2.2-6

Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips. However, if conformance with current engineering and ADA design requirements, and/or the provision of larger slips to meet demands, requires a reduction in the quantity of slips in existing berthing areas, those slips should be replaced, if feasible, in new berthing areas elsewhere in the harbor (e.g. within a portion of the 'safe harbor' area near the east breakwater). Under no circumstances shall the net loss of slips exceed 155 slips and the average slip length shall not exceed 32 feet.

Policy 4.2.2-10

- Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:
- Redesign and expand the existing boat launch facility to maximize the number of vehicle with trailer parking spaces meeting minimum Department of Boating and Waterway guidelines (10' X 40'). Larger vehicle with trailer parking spaces shall also be provided in adequate amount to meet demand as determined through environmental review process (minimum 292 spaces);
- Retain the existing number of dry boat storage spaces until a replacement dry stack storage facility is constructed and open for use. Maintain a minimum of 93 mast up surface boat storage spaces within the Harbor at all times, additional spaces shall be provided where feasible;
- Removal of any existing slips prior to construction and full operation of the boat storage facility shall only occur pursuant to an approved CDP for marina redevelopment that addresses impacts associated with the loss of slips; and
- Maintain boater parking at a minimum ratio of 0.60 parking spaces per boat slip.

The City/County have developed guidelines for existing and potential slip renters, one purpose of which is to provide assurance to existing slip renters,

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

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

The Commission finds that while there may be a potential net loss of up to 155 slips if no net loss of slips is found to be infeasible, and a loss of up to approximately 300 slips under 30 feet in length, this loss could be found acceptable with provision of a planned boat storage building capable of storing 400 boats and additional surface boat storage area capable of storing at least 93 mast-up boats based on the information provided by the County/City, the existing Embarcadero surface boat storage area has historically contained a total of 65 boats in surface storage that cannot be accommodated in the future dry stack storage facility. This figure includes the number of boats that are sailboats as well as those that are otherwise not suitable (too long and/or too tall) for the future dry stack facility and allows for 28 additional spaces (30% future growth) for a total of 93 needed surface spaces in addition to the 400 space dry stack facility.

Also, vehicle and trailer parking for the use of the public boat launch and surface boat storage within the remainder of the MSC Planning Area shall be maximized. Policy 4.2.2-10 also requires that the existing public boat launch parking lot be redesigned and expanded so that the vehicle with trailer parking spaces can be increased in number (minimum 292) and in size to meet the minimum Department of Boating and Waterways (DBAW) size (10' X 40'). However, additional larger vehicle with trailer parking spaces shall also be provided within the public boat launch facility to accommodate the larger heavy-duty tow vehicles and ocean-going vessels that are lacking in current layout. Those parking space dimensions range from 12' X 40' up to 12' X 65' if the tow vehicle is an RV. Recent Commission staff conversations with DBAW boating facility staff indicates that the majority of the spaces should be provided at 10' X 40' but that the number of larger spaces should

be determined by site specific demand⁵.

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

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

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

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

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

the revised plan requires a minimum of 1.6 acres be retained for shipyard use.

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

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

Also, a policy that ensures phasing of the anticipated development to ensure that land area, parking facilities and road capacity are dedicated for coastal-dependent and coastal-related land uses has been provided.

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

c. Visitor-Serving Commercial Development

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

With respect to visitor-serving commercial development, the City's proposed LUP contains the following land use designations: Visitor-Serving Commercial (VSC) and Day-Use Commercial (DUC). These land use designations will allow uses that will provide commercial uses including

eating and drinking establishments, recreation (including overnight accommodations) and entertainment establishments as a means of providing public access to the waterfront. The suggested modifications make some changes to the list of allowable uses in these areas. For example, the City proposed to allow office uses and yacht clubs in these land use areas. Both of these uses are not priority uses under the Coastal Act and are not appropriate within areas designated for higher priority visitor serving commercial uses. Thus, the Suggested Modifications omit these uses from these land use planning areas.

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

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

d. Low-Cost Overnight Accommodations

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

policies are needed to guide protection and provision of lower cost overnight accommodations. Therefore, the LUP amendment cannot be found consistent with the Coastal Act.

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

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

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

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

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

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

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

e. Limited Use Overnight Visitor Accommodations (LUOVAs)

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

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

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

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

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

In December 2006, the California State Lands Commission (SLC) held a public hearing to consider the consistency of a timeshare component of the Woodfin Suites Hotel in San Diego's Port District with the Public Trust Doctrine. The SLC performed an extensive analysis of the history of timeshare proposals on public trust lands, the impact that a timeshare development would have on the public's rights, and the public's ability to use the shoreline. The SLC determined that the development of timeshares would be inconsistent with the Public Trust Doctrine and the trust under which the San Diego Unified Port District holds title to the public trust lands that were involved. The SLC analysis concluded that timeshares do not enhance and facilitate the public's enjoyment of public trust lands as do traditional hotels, but instead significantly restrict the ability of the general public to use the shoreline. The substantial financial investment required to purchase a timeshare severely limits the number of people who would be able to use the timeshare units. In addition, there were concerns that try to improve the visitor-serving function of a timeshare through conditions would be difficult and that enforcing limitations or permit conditions on projects with potentially thousands of owners could be extremely difficult and burdensome (San Diego Unified Port District Port Master Plan Amendment No. 39 (Woodfin Suites Timeshare/Hotel))

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

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

f. Transit/Smart Growth

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

As described in the findings for denial, Land Use Plans must contain policies to encourage provision and use of public transit. Provision of a public shuttle service is one method to allow visitors to move from one area through non-automobile circulation thus reducing traffic congestion and enhancing public access to the coast. Ideally, a shuttle system would connect the Harbor District with other visitor-serving areas in the City, such as Doheny State

Beach and the Towne Center. The City has indicated that a shuttle for use by the public is provided during peak use periods associated with temporary events such as the annual Blues Festival; however, there is not currently a demand for an ongoing shuttle system.

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

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

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

g. Public Access and Recreation

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

fails to provide adequate policies to protect and enhance Public Access and Recreation.

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

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

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

Parking is a limited resource in the harbor, and there are diverse, intense and competing demands on the existing supply of 3,962 passenger spaces⁶ (according to the City/County as shown in Exhibit 18). Parking within the harbor is generally divided into areas supporting the following general categories: dedicated boater parking for boat slips (most of which are key-

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

card access controlled), time limited parking for commercial development (e.g. restaurants, retail shops, etc.), parking space for vehicles with trailers for the boat launch ramp, surface boat storage spaces, and parking for the hotel, yacht clubs, Marine Institute, Catalina Express and sportfishing, and spaces supporting access to recreational amenities like Baby Beach and picnic areas, walkways and green space out on the island (Planning Area 4). These existing parking spaces are distributed around the harbor in surface parking lots that support the adjacent uses (see Exhibit 18). The area of greatest competition for parking is in the north-east quadrant of the harbor (identified as 'parking area I' in Exhibit 18), where significant existing and proposed commercial development (e.g. restaurants, bars, retail) is located, the Catalina Express and sport fishing docks, the boat launch ramp, boat storage areas, and boat slips. This is the area closest to major roads with access into the harbor like Street of the Golden Lantern and Pacific Coast Highway which feed onto Dana Point Harbor Drive and is where the 'Commercial Core' is contemplated.

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

The plan contemplates a multi-level parking garage to serve the planned intensification in the Commercial Core (see Exhibit 18, beginning on page 6, 'parking area I'). That parking garage, if placed where preliminary plans show, would displace boat launch ramp parking and parking for sportfishing. The boat launch ramp parking would be made up by consuming some area currently used for boat storage. Of course, at this point, the only thing before the Commission is the LCP which establishes land uses, parking ratios, etc. and not the footprint of any forthcoming development. Elsewhere, existing parking spaces would be re-tasked toward other uses. This is made possible in this amendment through a change in the parking ratio requirements for various uses; but mostly by reducing the parking allocation required for boat slips from the current 0.75 to 1.6 spaces per boat slip, to 0.6 spaces per boat slip (as discussed further below). So, as an example, on the island (Planning Area 4), existing parking spaces that are currently allocated for boater parking under the 0.75 to 1.6 spaces per boat ratios, would be freed up by changing the required allocation to 0.6 spaces per boat, at which point the remaining spaces can be re-allocated for use by the planned expanded restaurant and yacht clubs in that area. As discussed elsewhere, the Commission is accepting this change to the parking requirement for boat slips. However, not all such re-allocation of parking spaces would be appropriate. For instance, parking that currently support recreational uses in

the linear park in Planning Area 4 (e.g. picnicking, walking, etc.) would not be appropriate. Re-allocating these spaces needed to support lower cost recreation in favor of an expanded yacht club or restaurant would not be consistent with Coastal Act requirements regarding protection of lower cost recreation. Thus, a policy is incorporated into the plan that prohibits this sort of re-allocation.

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

One of the more significant changes to parking requirements in the existing LCP is the proposed change to the parking required for boaters. Currently, for boat berthing areas, the LCP requires 0.75 spaces for slips 30 feet and under, 1.2 spaces for slips over 30 feet but under 45 feet, and 1.6 spaces for slips over 45 feet in length⁷. The City/County proposed to change this requirement to 0.60 spaces per boat slip. The City/County have justified this change on a number of factors. First, the City/County state that a study conducted by County staff in 1996 found that the existing ratio is much higher than ratios used in other California coastal marinas. That study recommended use of a ratio of 0.60 spaces per slip. The City/County are recommending the ratio of 0.60 spaces per slip because that ratio is provided as a guideline by the California Department of Boating and Waterways, and based on their own observations of parking lot usage in Dana Point Harbor. A parking usage survey of the boater parking lots conducted in 2006 by KOA Traffic Planning and Engineering found that there would be adequate boater parking, even during peak summer weekends (except for major holiday

⁷ See Section I.D.2.b (Circulation and Parking) in the 'Design Criteria and Minimum Specifications for Construction by Lessees at Dana Point Harbor' adopted by reference in the Dana Point Specific Plan Local Coastal Program Implementing Actions Program pursuant to Policy F.1.c.

weekends), if the ratio were lowered to 0.60 spaces per slip (see summary of study found on Exhibit 37). In fact, even though the LCP hasn't yet been changed, the County has been operating the boater parking areas with the 0.60 ratio since 1996 (when the Orange County Board of Supervisors adopted the standard) and have found it to be adequate. This ratio is slightly lower than the ratios used by other cities in the vicinity. Commission staff has confirmed that a ratio of 0.75 spaces per slip is used by the City of Long Beach, City of Newport Beach, and in Marina del Rey. Nevertheless, the City/County have documented that boater parking demands would be adequately met in Dana Point Harbor using the proposed 0.60 spaces per boat slip. While this ratio may be adequate for Dana Point Harbor, other harbors may be different.

The boating community has raised some concerns about lowering the parking required for boat slips and about other patrons of the harbor using/sharing parking⁸. Most of the concerns expressed stem from boaters experience with parking in the boater parking lots nearest to the Commercial Core. There are two parking lots in that area, a 121 space lot nearest to the commercial area (see Exhibit 37, 'east basin cove lot 6'), and a larger 490 space lot in front of the hotel (see Exhibit 37, 'east basin cove lot 2'). The City/County state that the 121 space lot is highly impacted because it is closest to the Commercial Core and any boater in the marina, regardless of the location of their boat, can use their key-card to access that lot and that many boaters use that lot when they want to visit the Commercial Core. The City/County state that new parking management measures would ensure that only boaters with boats near that lot can use it. In addition, the City/County have stated their intention to move transient boater docks (that don't usually generate a parking demand) into this area as part of the planned dock reconstruction so as to reduce the boater parking demand in this immediate area. Boaters state that the 490-space lot is also impacted, in part due to the shared use of these lots by Catalina Express, and in part by other users (including other boaters using the lot to access the commercial area). However, the 2006 by KOA Traffic Planning and Engineering found that there is adequate space in the 490-space lot to accommodate Catalina Express. Better parking management techniques will alleviate concerns here as well. For example, the County shows on Exhibit 18, page 7, their plan to shift some parking for Catalina Express over to other remote lots during summer periods when there is greater boater use of the boater parking lot. Boaters assert these issues will be compounded in both lots by the increased intensity of use in the Commercial Core. Therefore, the Commission has included policies in the Land Use Plan requiring the City/County to put

⁸ A variety of charges have been made about unpermitted re-allocation of parking spaces from one group to another group (e.g. Catalina Express use of 'boater' parking lots, commercial employee use of boat launch ramp parking area, long term boat storage in boat launch ramp parking, etc.). These charges are under investigation by Commission enforcement staff as to whether such reallocation would need a coastal development permit.

together a comprehensive parking management program that will address these issues. The parking management program will need to consider a variety of needs, depending on the location of the parking and the surrounding uses, giving special attention to the needs of boaters (where shared use would likely not be appropriate because of the unpredictability of some use) and users of the boat launch ramp because there are limited options for parking vehicles with trailers other than within the boat launch ramp parking. The needs of the general public visiting the harbor should also be considered where existing parking lots are underutilized during certain periods of time. In addition, the City/County state they won't rely on shared parking to park the expanded Commercial Core (see Exhibit 18, pages 6-9). Instead, a new parking garage will be constructed to serve that new development. Policies in the suggested modifications encourage that parking for new development be provided.

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

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

The Coastal Act strongly prefers Public Access and Recreation since it allows the general public a chance to enjoy and experience the coastline. The location of the site at Dana Point Harbor enhances that experience as it

is a location where different types of opportunities to experience the coast are found. However, adequate policies have not been included that will protect and enhance Public Access and Recreation. Only if modified to include the policies identified in the Suggested Modifications can the LUP Amendment be found to be in conformance with Sections 30210, 30211, 30212(a), 30212.5, 30214, and 30252 of the Coastal Act

e. Coastal Resource Protection

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

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

Policies that will also protect marine resources need to be provided as well. These policies will require that uses of coastal waters, streams, wetlands, estuaries and lakes be carried out in a manner that will restore and sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific and educational purposes. Additionally, these policies will require protection against the spillage of crude oil, gas, petroleum products or hazardous substances in relation to any development or transportation of such materials. Furthermore, these policies will require implementation of strict environmental protection practices during any necessary diking, filling or dredging of open coastal waters, wetlands, estuaries and lakes to reduce any significant disruption of habitats and water circulation. These policies also will require that standards for maintaining the quality of water through the implementation of erosion control and flood control facilities are achieved. The following are examples of some of the types of policies that will be provided to protect marine resources: a policy that states that marine resources shall be maintained, enhanced and where feasible, restored and that special protection shall be given to areas and species of special biological or economic significance; a policy that states that the biological productivity and quality of coastal waters, streams, wetlands, estuaries and lakes and the restoration of optimum populations of marine organisms shall be ensured; a policy stating that the diking, filling or dredging of open coastal waters, wetlands, estuaries and lakes shall only be

permitted in accordance with Section 30233 of the Coastal Act; a policy stating that new development shall include construction phase erosion control and polluted runoff control plans, a policy that reduces underwater noise impacts from construction; and a policy that would monitor dredging projects within the region to identify opportunities to reduce disposal costs and utilize dredge spoils for beach nourishment; and a policy protecting eelgrass.

An activity within the harbor that can adversely impact habitat, more specifically avian species, is the practice of tree trimming. Thus, a policy has been provided regarding tree trimming, Policy 7.1.2-2. This policy will ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, and nesting habitat of bird species listed pursuant to the federal of California Endangered Species Acts, California bird species of special concern and wading birds (herons and egrets).

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

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

- 1). They must be relatively rare when analyzed on a regional basis – Areas with suitable tree stands that meet wading bird roosting and nesting requirements (height and foliage and proximity to foraging grounds) would be considered "relatively rare".
- 2). They must be in close proximity (within foraging distance) to a major wetland complex (e.g. Ballona Wetlands and non-native tree stands in

Marina Del Rey) - A major wetland complex is one that is tens to hundreds of acres in size and consists of some combination of estuary/lagoon, channels, mudflats, salt marsh, brackish marsh, freshwater marsh, and uplands.

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

Although the Commission finds that the trees used by the herons and egrets do not rise to the level of ESHA, they must be protected as nesting and roosting habitat, similar to the protection afforded the trees used by herons and egrets in Channel Islands and Long Beach harbors in which the Commission also found did not rise to the level of ESHA (Channel Islands PWP Amendment 1-07 & CDP No. 5-08-187-[Long Beach]). Therefore, Policy 7.1.2-2 has been added to the LUP that prohibits the removal of any trees that have been used by wading birds (herons or egrets) for nesting or roosting within the past five years unless necessary for public health or safety reasons. Any trees removed would also have to be mitigated at a 1:1 ratio and tree trimming would have to be done outside of the nesting season unless a public health or safety reason would require trimming during the nesting season. The policy further requires that the details of the tree trimming program be developed in the Implementation Program portion of the LCP. Additionally, Policy 7.1.2-3 has been added to ensure that noise from construction does not adversely impact the nesting activities of the above identified bird species. The Commission has required similar construction noise control adjacent to heron and egret nesting areas in Marina del Rey in the Oxford Basin project 5-08-242 (Los Angeles County) and elsewhere in Ventura County.

LCP's must include policies that protect water quality. These policies must prevent adverse impacts to water quality stemming from construction anticipated to take place in the harbor and also impacts that would occur after such construction takes place. In order to protect water quality, several policies have been provided, including: a policy stating that development shall not result in the degradation of the water quality of coastal surface waters including the ocean, coastal streams, or wetlands and of groundwater basins; a policy stating that development shall be designed to minimize to the maximum extent feasible, the introduction of pollutants that may result in significant impacts to surface waters, groundwater, or coastal waters; a policy stating that new development shall minimize, where feasible, the development footprint and directly connected impervious surfaces, as well as the creation of and increases in impervious surfaces; a policy stating that

commercial development shall incorporate BMP's designed to minimize or avoid the runoff of pollutants from structures, landscaping, parking and loading areas; and a policy regarding boat maintenance and operation practices. Due to its impact on water quality, a policy regarding engines in all motorized marine vehicles (e.g. jet skis, motor boats, etc.) has been provided, which encourage the use of less polluting, cleaner running engines in all motorized marine vehicles (Policy 7.3.2-2). Furthermore, a policy has been provided to deal with the type of materials used for piles. The policy states that the preferred material for pilings used for construction of piers, docks, or slips is concrete or steel coated with a non-toxic material. However, pilings treated with Ammoniacal Copper Arsenate (ACA), Ammoniacal Zinc Arsenate (ACZA) or Chromated Copper Arsenate (CCA) wrapped or coated prior to installation with a water tight plastic sleeve or similar sealant can also be used, but are not preferred over concrete piles or steel piles coated with a non-toxic material. Also, timber piles preserved with creosote (or similar petroleum-derived products) are not allowed. Additionally, due to the impacted water quality that occurs at Baby Beach, Policy 7.2.1-11 has been provided which, while it allows for the non-motorized craft launching area and picnic and park area within Baby Beach to remain, the policy allows for modification of the configuration in order to accommodate mitigation for water quality-related improvements.

In addition to the previous discussed policies regarding water quality, landscaping also plays an important part in the protection of water quality. Any proposed vegetated landscaped areas located in the harbor should only consist of non-invasive plants that are drought tolerant. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation, which is primarily drought tolerant. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should primarily be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Hence, a policy stating that only non-invasive, drought tolerant plants be used for landscaping has been provided.

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

Protection of Coastal Resources is an important aspect of the Coastal Act. The exceptional resources that can be found along the California coastline need to be protected so that future generations may be able to experience them. The ability to experience these resources is enhanced by the location, as Dana Point Harbor serves as an excellent location for the general public to learn and experience the California coastline. However, no such policies have been included that will protect Coastal Resources. Only if modified to include the above discussed policies can the LUP Amendment be found to be in conformance with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act.

i. Locating New Development

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

A number of policies have been provided in the revised plan as modified by Commission staff, which would protect coastal resources from adverse development. For example, a policy that states that the County of Orange will assure that additional development is compatible with existing uses and enhances the scenic, recreational and visitor opportunities for the area. Additionally, a policy that has been provided states that the Dana Point Harbor Revitalization Plan has been developed with the specific intent of promoting Coastal Act compliance, by enhancing public access opportunities, providing updated visitor-serving commercial and marine recreational amenities and promoting coastal resource preservation throughout the Harbor. Also, in order to encourage the use of green building standards, a policy is included stating that these will be used for development

in the harbor. Furthermore, to protect against the possibility of bird strikes due to the use of clear materials, a policy has been provided that states that if enclosures used to shelter outside eating areas are designed using clear materials, they shall be etched or tinted to make them visible to birds and with awnings or covers that are integrated into the architectural design of the buildings.

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

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

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

The Coastal Act states that scenic and visual resources must be protected to protect the scenic beauty of the coastal landscape as a resource of public

importance. Thus, policies reflecting this have been provided. Along Pacific Coast Highway (PCH) views of the Dana Point Harbor area are limited as a result of development on and along the coastal bluffs. However, there are a number of public vantage points from Doheny State Beach, the bluffs surrounding the harbor and from other public areas such as Street of Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point. Anticipated development will have some impacts upon views from those areas, but those impacts will not be significant. The eastern portion of Dana Point Harbor is partially visible from PCH across Doheny State Beach, including the eastern jetty and portions of the shipyard area of the Harbor. While views will be modified from the anticipated dry storage facility, these views are already partially obstructed by the jetty and existing landscaping. To minimize any visual impacts, policies have been provided. Although certain views from the public parks located north of the Harbor along the bluffs will be somewhat altered by the implementation of the anticipated planned dry boat storage facility, policies have been provided to minimize view impacts from these public viewpoints. Current views of the water and boats in the water from the intersection of the Street of the Golden Lantern and Dana Point Harbor Drive are blocked due to existing landscaping and buildings. The Street of the Golden lantern is anticipated to be realigned to the east from the intersection with Dana Point Harbor Drive to accommodate direct access into an anticipated parking deck and surface parking areas. This anticipated realignment of the Street of the Golden Lantern will provide a view of the east marina with the commercial buildings located to the east and west of the street. Anticipated improvements to Dana Point Harbor Drive include the potential future realignment of the road to eliminate the roundabout adjacent to the Youth and Group Center. The views from the eastern portion of the roadway looking south and west may be partially obstructed by the development of the new multilevel dry stack-boat storage building. However, because of the existing landscaping and boat storage within this area, it is not anticipated that the views will substantially change, as a result of anticipated harbor improvements. In order to assure that no significant view impacts occur and that scenic and visual resources are protected, several policies have been provided. A policy that ensures development within designated and proposed scenic corridors is compatible with scenic enhancement and preservation and shall not significantly impact views through these corridors has been provided (Policy 8.4.1-2). Additionally, a policy that requires the protection and enhancement of public views to and along the coast through open space designations and innovative design techniques has been provided. A policy has also been provided that will include a graphic depicting the view corridors found within the harbor. In addition, a policy is included requiring that site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. Also, a policy regarding height limits of allowed development has also been provided that states that all new development will not exceed 35-feet in height except for the anticipated boat storage facility that will be sixty-five

(65) feet; the anticipated Commercial Core area (Planning Area 2) buildings fronting on the Festival Plaza or structures fronting the East Marina Boat Basin (Planning Area 10) that will be a maximum of sixty (60) feet; and the Visitor-Serving Commercial (Planning Area 3) building(s) that will be a maximum of fifty (50) feet (Policy 8.5.1-3). However, these heights are only allowed to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced.

The Coastal Act considers the protection of natural landforms, including coastal bluffs, important since natural landforms are an essential part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance. A policy that preserves significant natural features as part of new development has been provided. Additionally, the policy states that permitted development shall be sited and designed to minimize the alteration of natural landforms. To preserve Dana Point's bluffs as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development, the following policies have been provided: drainage will be directed away from the bluff edge and towards the street, where feasible; the prohibition of permanent irrigation systems and the use of water intensive landscaping within the setback area to prevent bluff erosion; only allowing bluff repair erosion control measures, such as retaining walls, to protect coastal-dependent uses or existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs; and prohibiting development on the bluff face, except for drainpipes.

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

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

amount of future sea level rise that can be used for design purposes. Policies that deal with potential threats to development from tsunamis, rogue waves, storm surges and Seiches, hurricanes, tropical storms, coastal erosion, geologic, seismic, and fire have also been provided.

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

The Coastal Act contains policies that prevent uncontrolled development from adversely impacting Coastal Resources. Development should be located so as to avoid adverse impacts to scenic and visual resources, infrastructure, and paleontological cultural resources. In addition, development should minimize risk to hazards. Protection of Coastal Resources is an important aspect of the Coastal Act. Such policies are necessary to protect development from adversely impacting coastal resources that are abundant especially in the location of Dana Point Harbor. However, adequate policies have not been included that will prevent impacts to coastal resources from adverse development. Only if modified to include the policies identified in the suggested modifications can the LUP Amendment be found to be in conformance with Sections 30210, 30230, 30231, 30233, and 30240 of the Coastal Act.

3. CONCLUSION

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

IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

Point LCP Amendment 1-08 consists of Land Use Plan Amendment.

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

As outlined in this staff report, the proposed LUP Amendment, as submitted, is inconsistent with the Chapter 3 policies of the Coastal Act. However, if modified as suggested, the LUP Amendment will be consistent with the Chapter 3 policies of the Coastal Act. Thus, the Commission finds that the LUP Amendment, if modified as suggested, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request 1-08 if modified as suggested herein. Any non-exempt development identified in the LCP amendment will require a coastal development permit prior to construction. At that point, any project-specific impacts will be evaluated and addressed consistent with Coastal Act and LCP requirements.