TO: Commissioners and Interested Persons

FROM: Charles Lester, Executive Director
       Sherilyn Sarb, Deputy Director
       Teresa Henry, South Coast District Manager
       Karl Schwing, Orange County Area Supervisor
       Fernie Sy, Staff Analyst

SUBJECT: Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of Major LCP Amendment No. 1-10 is legally adequate. For Commission review at its October 5-7, 2011 meeting in Huntington Beach.

STAFF RECOMMENDATION

Staff recommends that the Commission concur with the Executive Director's determination that the City's action is legally adequate.

BACKGROUND

In 2006, the City of Dana Point initially submitted Local Coastal Program (LCP) Amendment No. 3-06 for Commission certification pursuant to City Council Resolution No. 06-09-13-06 and also changes contained in City Council Ordinance No. 06-08. However, this amendment was withdrawn and resubmitted and the request was refilled as LCP Amendment No. 1-08. Local Coastal Program Amendment No. 1-08 proposed to amend the Local Coastal Program Land Use Plan (LUP) 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). The City's submittal of the Dana Point Harbor Revitalization Plan also included an Implementation Plan (IP) component. However, that component was not reviewed by the Commission at the October 8, 2009 meeting. It was determined that the IP component would be heard at a later date. Therefore, only the Land Use Plan (LUP) of the Dana Point Harbor Revitalization Plan went before the Commission at the October 8, 2009 hearing and on that date the Commission approved the amendment with suggested modifications.

Subsequently, the IP component was withdrawn and resubmitted and the request was refilled as LCP Amendment No. 1-10, which proposed to amend the Local Coastal Program IP to implement the recently approved (October 8, 2009) LUP Amendment, replacing, in its entirety, the implementation sections in the Dana Point Specific Plan Local Coastal Program relevant to the Dana Point Harbor. Therefore, only the Implementation Plan (IP) of the Dana Point Harbor Revitalization Plan went before the Commission at the January 12, 2011 hearing and on that date the Commission approved the amendment with suggested modifications. The major suggested modifications dealt with the following:
Defined the geographic location to be considered when determining whether proposed Dana Point Harbor development is consistent with community character; allowing Conceptual Building #4 (the new building proposed in the Dana Wharf area) to be excepted from the requirement that additional height above 40 ft. be limited to architectural features only that do not increase the gross floor area for the purposes of determining parking requirements and other height restrictions, if the footprint of the structure is less than 5,000 sq. ft. and provided the majority of the upper level is used to accommodate harbor-related public safety operations that need a harbor-wide view; required that any trees containing nests of the identified protected bird species that had been recently removed on or before January 12, 2011 (the day of the Commission meeting) be mitigated at a ratio of 2:1 and that any future trees that are removed during construction, pursuant to the Tree Trimming Procedures for Harbor Bird Habitat, shall be mitigated at a 2:1 ratio if they contain nest or have evidence of nesting within the past five years; required that a do-it-yourself or boat-owner self-repair area be provided within the Marine Commercial Services Area (PA 1) either within or adjacent to the shipyard lease area or the dry boat storage facility; allowing for changes in Harbor anchorage space in order to accommodate new berthing or mooring space through the coastal development permit process; and modified the Parking Management Plan provisions to require that accurate baseline numbers for harbor boat slips, dry boat storage spaces and parking spaces, based on legal and permitted development, be determined and used in the development of the parking management plan.

At the April 13, 2011 Commission hearing, the Revised Findings for LCP Amendment 1-10 (to be consistent with the action taken by the Commission at the January 12, 2011 Commission hearing) were approved by the Commission.

On June 13, 2011 (1st reading) and then finally on July 25, 2011 (2nd reading), the Dana Point City Council adopted Resolution No. 11-06-13-01 acknowledging receipt of the Coastal Commission action and accepting and agreeing to the suggested modifications to the City’s Local Coastal Program Implementation Plan and also requesting final certification by the California Coastal Commission. Additionally, on June 13, 2011 (1st reading) and then finally on July 25, 2011 (2nd reading) the City Council adopted Ordinance No. 11-03 amending the Dana Point Specific Plan and Zoning Code by incorporating the modifications suggested by the Commission. The City has submitted the modifications to the Executive Director for a determination that they are consistent with the Commission’s action on January 12, 2011. City Council Resolution 11-06-13-01 and City Council Ordinance No. 11-03 adopting the suggested modifications are attached (Exhibit #2 and #3).

As provided in Section 13544 of the California Code of Regulations, the Executive Director must determine whether the City’s action is legally adequate and report that determination to the Commission. In this case, the Executive Director has determined that the City’s action is legally adequate. Unless the Commission objects to the Executive Director’s determination, the certification of Dana Point LCP Amendment No. 1-10 shall become
effective upon the filing of the required Notice of Certification with the Secretary of Resources as provided in Public Resources Code Section 21080.5(d)(2)(E).

RECOMMENDATION

Staff recommends that the Commission CONCUR with the Executive Director’s determination as set forth in the attached letter (a letter that substantially conforms with Exhibit #1 to be sent after Commission endorsement).
September 15, 2011

Kyle Butterwick, Community Development Department Director
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629-1805

Subject: EFFECTIVE CERTIFICATION OF DANA POINT LOCAL COASTAL PROGRAM AMENDMENT 1-10

Dear Mr. Butterwick:

We are pleased to notify you that on October 6, 2011, the Commission concurred with the Executive Director’s determination that the action of the City of Dana Point accepting certification of Local Coastal Program Land Use Plan (LCP) Amendment No. 1-10 with suggested modifications was legally adequate. Therefore, the LCP amendment will be fully effective upon filing of the notice of the Commission’s certification with the Secretary of the Resources Agency as provided by Public Resources Code Section 21080.5(d)(2)(v).

City of Dana Point LCP Amendment No. 1-10 was submitted for Commission certification pursuant to City Council Resolution No. 06-09-13-06. The approved Implementation Plan (IP) amendment would amend the IP to implement the recently approved (October 8, 2009) Land Use Plan (LUP) Amendment, replacing, in its entirety, the implementation sections in the Dana Point Specific Plan Local Coastal Program relevant to the Dana Point Harbor.

The Implementation Plan (IP) of the Dana Point Harbor Revitalization Plan went before the Commission at the January 12, 2011 hearing and on that date the Commission approved the amendment with suggested modifications.

At the April 13, 2011 Commission hearing, the Revised Findings for LCP Amendment 1-10 were approved by the Commission.

On June 13, 2011 (1st reading) and then finally on July 25, 2011 (2nd reading), the Dana Point City Council adopted Resolution No. 11-06-13-01, and Ordinance 11-03 acknowledging receipt of the Coastal Commission Action and accepting and agreeing to Local Coastal Program Amendment No. 1-10 as modified.

On behalf of the Coastal Commission, I would like to congratulate the City on the completion of LCP Amendment 1-10. If you have any questions, please contact Fernie Sy at our Long Beach office (562) 590-5071.

Sincerely,

Teresa Henry
District Manager
RESOLUTION NO. 11-06-13-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA ADOPTING THE COASTAL COMMISSION’S MODIFICATIONS TO THE IMPLEMENTATION PLAN FOR LOCAL COASTAL PROGRAM AMENDMENT LCPA06-03 AND REQUESTING CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

The City Council of the City of Dana Point does hereby resolve as follows:

WHEREAS, the City Council on September 13, 2006, approved Local Coastal Program Amendment LCPA 06-03 for adoption of the Dana Point Harbor Revitalization Plan and District Regulations; and

WHEREAS, LCPA 06-03 was submitted to the California Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on January 12, 2011, approved the implementation Plan component of Local Coastal Program Amendment 06-03 with suggested modifications; and

WHEREAS, the California Coastal Commission found that the LCP Amendment and Implementation Plan Amendment with suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act, minimized or mitigated any potential significant effects, would not result in significant adverse impacts within the meaning of CEQA and that there are no feasible alternatives within the meaning of CEQA that would reduce the potential for significant environmental impacts; and

WHEREAS, said suggested modifications have been incorporated into the Implementation Plan component of LCPA 06-03 and the Dana Point Harbor Revitalization Plan and District Regulations, and

WHEREAS, the City Council, after giving notice as prescribed by law, held a public hearing on June 13, 2011, regarding the Coastal Commission’s Suggested Modifications to the Implementation Plan component of the Dana Point Local Coastal Program Amendment LCPA06-03, and the City Council finds that the proposed amendment is consistent with the Dana Point Specific Plan/General Plan, the Local Coastal Program and the California Coastal Act; and

WHEREAS, the City Council of the City of Dana Point certifies that it intends to implement the Local Coastal Program in a manner fully consistent and in conformance with the California Coastal Act; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15261(f) and 15265(a)(1), and

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

Section 1. That the above recitations are true and correct;
Section 2. The City Council finds as follows:

A. The City acknowledges receipt of the Coastal Commission’s certification of the LCP Amendment with suggested modifications.

B. The City accepts and agrees to the suggested modifications and agrees to take formal action to satisfy the suggested modifications by making conforming amendments as necessary to its ordinances, General Plan, LCP, Zoning Code, and Dana Point Harbor Revitalization Plan and District Regulations.

C. The City agrees to issue coastal development permits for the total area included in the certified Local Coastal Program.

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

E. That the adoption of the Dana Point Harbor Revitalization Plan as an amendment to the Local Coastal Program is in the public interest;

F. That the Local Coastal Program Amendment (LCP.06-03) is consistent with, and will be implemented in full conformity with the Coastal Act;

G. That the Environmental Impact Report for the Dana Point Harbor Revitalization Plan is complete and adequate;

H. That the City Council adopts the following findings:

1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. Proper notice in accordance with the LCP Amendment procedures has been followed,

2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act. The amendments to the General Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources. That the Land Use Plan is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act and that the Implementation Program Amendment is in conformity with and adequate to implement the Land Use Plan.

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the locations, and intensity of land and water uses. As a General Plan Amendment and Local Coastal Program Amendment, no specific development is proposed. Any proposed development will be reviewed for compliance with the City’s Local Coastal Program.
4. That the level and pattern of development proposed is reflected in the Land Use Plan, Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.

6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City’s Zoning Code is being amended concurrently with the LCP amendment.

7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.

8. The City certifies that the Land Use Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

9. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.

10. The Resolution of the City Council specifies that the Implementation Plan component of Local Coastal Program Amendment LCPA 06-03 be submitted to the Coastal Commission for final certification.

Section 3. That the Dana Point City Council approved Dana Point Local Coastal Program Amendment LCPA06-03 pursuant to Resolution 11-06-13-01 and Ordinance No. 11-03. LCPA06-03 pertains to adoption of the Dana Point Harbor Revitalization Plan which includes the required land use and implementation measures. A copy of Ordinance 11-03 approving the amended Implementation Plan component of LCPA06-03 with the specific content of the proposed amendment attached as Exhibit A is incorporated herein by this reference as though fully set forth herein.

Section 4. That the California Coastal Commission is hereby requested to consider, approve and finally certify the Implementation Plan component of Dana Point Local Coastal Program Amendment LCPA06-03 which replaces the Implementation Plan component for the 1986 Dana Point Specific Plan Local Coastal Program for the Dana Point Harbor.
Section 5. That pursuant to Section 13551(b) of the Coastal Commission Regulations, the Implementation Plan component of Dana Point Local Coastal Program Amendment LCPAGE-03 will automatically take effect immediately upon California Coastal Commission approval, as provided in Public Resources Code Section 30512, 30513 and 30519.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 13th day of June, 2011.

SCOTT SCHOEFFEL, MAYOR

ATTEST:

KATHY WARD
CITY CLERK

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

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 11-06-13-01 was duly adopted and passed at a regular meeting of the City Council on the 13th day of June, 2011, by the following roll-call vote, to wit:

AYES:  Council Members Bartlett, Brough, Weinberg, Mayor Pro Tem Anderson, and Mayor Schoeffer

NOES:  None

ABSENT: None

KATHY WARD
CITY CLERK
ORDINANCE NO. 11-03

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

Applicant: City of Dana Point / County of Orange
File No.: FF# 0830-10/LCPA 06-03

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

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

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

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

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

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

WHEREAS, the Dana Point Harbor Revitalization Plan and District Regulations is part of a comprehensive planning approach that has included extensive analysis of the Harbor area, including Environmental Impact Report No. 561 that has been certified by the Orange County Board of Supervisors and covers all Dana Point Harbor Revitalization improvements; and
WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code; and

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

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

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

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

WHEREAS, the California Coastal Commission did on January 12, 2011, conducted a duly noticed public hearing as prescribed by law and approved the Implementation Plan with suggested modifications for the Dana Point Harbor Revitalization Plan and District Regulations and Local Coastal Plan Amendment LCAPA 06-03; and

WHEREAS, the City Council did on June 13, 2011, conducted a duly noticed public hearing as prescribed by law to consider the Coastal Commission’s suggested modifications to the Implementation Plan for the Dana Point Harbor Revitalization Plan and District Regulations and Local Coastal Plan Amendment LCAPA 06-03 attached hereto as Exhibit A and incorporated herein by this reference; and

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

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

Section 1. That the above recitations are true and correct.
Section 2. That the City Council hereby approves the implementation plan component of the Dana Point Harbor Revitalization Plan and District Regulations as modified by the California Coastal Commission on January 12, 2011, attached hereto as Exhibit A.

Section 3. The City Council finds as follows:

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

B. That the adoption of the proposed modifications to the Dana Point Harbor Revitalization Plan and District Regulations as an amendment to the Dana Point Specific Plan and Local Coastal Program and Zoning Code is in the public interest;

C. That the Local Coastal Program Amendment LCRA 06-03 is consistent with, and will be implemented in full conformity with the Coastal Act;

D. That the City Council adopts the following specific findings:

1. That the public and affected agencies have had ample opportunity to participate in the LCRA process. Proper notice in accordance with the LCRA Amendment procedures has been followed.

2. That all policies, objectives, and standards of the LCRA conform to the requirements of the Coastal Act, including that the Land Use Plan as amended is in conformance with and adequate to carry out the Chapter 3 policies of the Coastal Act in that the amendment is a Harbor Land Use Plan that meets the requirements of and implements the provisions and policies of the Coastal Act at the local level by protecting, maintaining and, where feasible, enhancing the natural and scenic qualities of coastal resources; assures access consistent with conservation principles and constitutionally protected private property rights; assures priority for coastal-dependent and coastal-related development; and, encourages state and local government cooperation concerning the planning and development process.

3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the locations and intensity of land and water uses in that subsequent development within the harbor will be reviewed for compliance with the Coastal Act provisions and other applicable state law.
4. That the level and pattern of development proposed is reflected in the amended Land Use Plan, Zoning Code, and Zoning Map. The applicable sections are being amended accordingly to be consistent with state law.

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development, proposed after certification of the LCPA. Proper notice in accordance with the LCP Amendment procedures has been followed.

6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. The City's Zoning Code is being amended concurrently with the LCP amendment.

7. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 26 of the Public Resources Code as amended, the California Coastal Act of 1976.

8. The City certifies that the Implementation Plan, as amended, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act.

9. The City certifies the implementing actions, as amended, are in conformity with and adequate to carry out the provisions of the amended Land Use Plan.

10. The Resolution No. 11-05-13-01 of the City Council specifies that Local Coastal Program Amendment LCPA 06-03 as modified be submitted to the Coastal Commission for certification.

Section 4. Chapter 9.25 of the City's Zoning Code is deleted in its entirety and amended to read as follows:

Chapter 9.25
DANA POINT HARBOR DISTRICT

Sections:

9.25.010 Dana Point Harbor Revitalization Plan & District Regulations

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

Section 5. The Dana Point Harbor Revitalization Plan & District Regulations shall replace in its entirety the Dana Point Harbor Planned Community District Development Plan and thereby amend the relevant portion of the Dana Point Specific Plan as applicable.

Section 6. The Dana Point Harbor Revitalization Plan & District Regulations shall be included as Appendix C of the Dana Point Zoning Code. Furthermore, the Dana Point Harbor Revitalization Plan and District Regulations shall replace the existing Dana Point Harbor Planned Community regulations in the City’s Zoning and Municipal Code including, but not limited to, Appendix A of the Zoning Code.

Section 7. The City Clerk shall certify to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 26th day of July, 2011.

SCOTT SCHOFFEL, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK
STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) ss.
CITY OF DANA POINT  )

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that the
foregoing Ordinance No. 11-03 was duly adopted and passed at a regular meeting of the
City Council on the 25th day of July, 2011, by the following roll-call vote, to wit:

AYES: Council Members Bartlett, Brough, Weinberg, Mayor Pro Tem
       Anderson, and Mayor Schoeffel.

NOES: None

ABSENT: None

[Signature]
KATHY M. WARD
CITY CLERK
STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF DANA POINT  

AFFIDAVIT OF POSTING AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 11-03, being:

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

was published in summary in the Dana Point News newspaper on the 23rd day of June, 2011, and the 4th day of August, 2011, and, in further compliance with City Resolution No. 91-10-08-1, on the 14th day of June, 2011, and the 29th day of July, 2011, was caused to be posted in four (4) public places in the city of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library

KATHY WARD, CITY CLERK
Dana Point, California