

CALIFORNIA COASTAL COMMISSION

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

**COMMISSION NOTIFICATION OF APPEAL**

DATE: July 8, 2014

TO: City of Dana Point
Attn: John Tilton
33282 Golden Lantern
Dana Point CA 92629

FROM: Fernie Sy, Coastal Program Analyst

RE: **Commission Appeal:** A-5-DPT-14-0036

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: CDP 13-0018

Applicant(s): County of Orange

Description: Commercial Core Revitalization

Location: Dana Point Harbor

Local: Approved w/ Conditions

Appellant(s): Coastal Commissioners Mary K. Shallenberger & Dr. Robert Garcia

Date Appeal: July 8, 2014

The Commission appeal number assigned to this appeal is A-5-DPT-14-0036. The Commission hearing date has been tentatively set for August 2014 in San Diego. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Dana Point's consideration of this coastal development permit must be delivered to the South Coast Area office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Fernie Sy at the South Coast Area office.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners Mary K. Shallenberger and Dr. Robert Garcia
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Dana Point
2. Brief description of development being appealed: The Dana Point Harbor Commercial Core Project includes renovations of existing buildings, phased demolition of existing buildings along with phased construction of new commercial buildings reconfiguration of streets and other infrastructure improvements, new parking structure, landscaping, parking management plan, master sign program and conceptual approval of a dry stack storage building, crane and storm drains.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 24650 Dana Point Harbor Drive, City of Dana Point, Orange County.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions: XX
 - c. Denial:

NOTE: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-DPT-14-0036

DATE FILED: July 8, 2014

DISTRICT: South Coast

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: XXX
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: June 17, 2014
7. Local government's file number: Coastal Development Permit: CDP13-0018

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
- City of Dana Point
Attn: John Tilton
33282 Golden Lantern
Dana Point, CA 92629-1805
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. Boaters 4 Dana Point , Bruce Heyman

 - b. Dana Point Boaters Assoc. Rodger Beard

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The subject site, Dana Point Harbor, is approximately 276.8 acres, owned and operated by the County of Orange and located entirely within the City of Dana Point. 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. It 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 Dana Point Harbor Revitalization Plan, to be discussed more thoroughly below) 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. In 2008, the City of Dana Point proposed to amend the Local Coastal Program (LCP) to incorporate the Dana Point Harbor Revitalization Plan (replacing sections of the Dana Point Specific Plan relevant to the Dana Point Harbor (1986 LCP), a project specific amendment, that would establish new land use designations and implementation policies throughout the harbor. In October 2009, the Land Use Plan (LUP) was approved by the Commission; and in January 2011, the Implementation Plan (IP) was approved by the Commission.

A number of significant issues were raised during the course of processing this Dana Point Harbor Revitalization Plan Local Coastal Program Amendment (LCPA) and as a result numerous revisions were made to the LCPA. The issues included the lack of standards/regulations to: 1) ensure that size and bulk of the proposed buildings in the Commercial Core were designed so that significant coastal public views through scenic viewpoints are protected and that community character of the area is also preserved; 2) ensure the protection, maintenance and enhancement of the priority beach access, r boating and other recreational water craft uses and the parking supporting these uses, including the public boat launch facility, dry boat storage and recreational and marina parking; 3) protect harbor development from hazards, such as sea level rise; 4) maximum public access and use through a sign program for the entire harbor area; and 5) provide transportation demand management measures to facilitate parking and circulation within the harbor; as well as, linking areas outside the harbor.

The proposed coastal development permit is for the Commercial Core project, which encompasses an approximately 37.7 acre subarea of the entire Dana Point Harbor. The project is the landside focal point of the Dana Point Harbor Revitalization Plan, which proposes to reconstruct and expand the landside commercial area. More specifically, the project consists of

the following: the phased demolition of existing commercial and boater support facilities, renovation and/or construction of new retail/restaurant/office space for a total of 31,949 sq. ft. of retail uses, 12,309 sq. ft. of office-related uses, 77,178 sq. ft. of restaurant (with an additional 13,822 sq. ft. of outdoor dining areas), 2-level parking deck, open space Festival Plaza area and dry stack boat storage building. Site improvements are also proposed consisting of circulation/street/parking area reconfigurations, installation of two new traffic signals and infrastructure improvements and relocation of existing South Coast Water District Sewer Lift Station and telecommunications/SONGS towers. Additionally, the project is being processed concurrently with a Parking Management Plan and Master Sign Program. Lastly, the City has also approved in concept a dry stack boat storage building, a 25 ft. high, 4-ton capacity, 18 ft. bridge jib crane, and the abandonment of an existing storm drain outfall and replacement with a 42 in. outfall, and upgrades to another existing outfall to increase the size from the existing 12 in. to 18 in., which all ultimately need a coastal development permit from the Coastal Commission because they involve development within areas where the Commission retains permit jurisdiction.

The areas of concerns that resulted in standards/regulations being included into the LCP continue to be significant areas of concerns and were subsequently evaluated by the City in their processing of Coastal Development Permit: CDP13-0018 for the Commercial Core project. However, the city did not adequately address these concerns in their approval of the coastal development permit. The City's LCP provides policies to address these areas of concern to address protection of coastal public views, emphasis and protection of priority uses in the harbor, evaluation of hazard impacts, and establishment of a sign program, as well as, transportation demand measures.

The City's approval gives in-concept approval of the construction of a dry stack boat storage building and CDP approval for various other buildings located in the Commercial Core area of the Dana Point Harbor Revitalization Plan. The dry stack boat storage building is located within the Marine Services Commercial (Planning Area 1) and the other proposed buildings are located within the Day Use Commercial (Planning Area 2) of the Commercial Core/Dana Point Harbor Revitalization Plan and also includes some development in Planning Area 3, Visitor Serving Commercial. Standards/policies were incorporated into the LCP to address concerns about adverse impacts to coastal public views from scenic viewpoints and to ensure new buildings would be constructed consistent with community character. The Land Use Plan (LUP) includes Policy 8.5.1 to address bulk and height limitation of buildings within the harbor. The District Regulation (IP) includes Policy 4.5 for the Marine Services Commercial-Planning Area 1 (Chapter 4 of the District Regulations) that states that while the building height is thirty-five (35) ft. maximum, an exception for a maximum of sixty-five (65) ft. is allowed provided that *significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced*. Within this Marine Services Commercial, a dry stack boat storage building is envisioned; however, the City has only provided a conceptual approval for this building since a coastal development permit from the Coastal Commission would be necessary because it would be partly located in an area of our original jurisdiction. While an exception is provided to exceed the 35-ft. height limit, any development that does exceed the height limit must also show how it would protect and enhance significant coastal public views through scenic corridors and from scenic viewpoint. The application does not provide a discussion of how the 65-ft. tall dry stack boat storage building is consistent with this policy requirement. A similar policy (Policy 5.5) is found for the Day Use Commercial-Planning Area 2 (Chapter 5 of the District Regulations); however, the policy in this chapter only allows the height to be exceeded by sixty (60) ft. Nevertheless, the application again does not provide a discussion of how the proposed buildings in this planning area are consistent with this policy. For the development in both

planning areas, the City fails to identify how the proposed project protects and enhances significant coastal public views through scenic corridors and from scenic viewpoints as required by the LCP. There are also additional requirements in Policy 5.5 that need to be adhered to when the buildings exceed the height requirements, but the City again fails to provide justification on how it is consistent with these requirements. These additional requirements include using architectural design, building heights, irregular massing and offsets to break up the facade of the structures and provide a pedestrian setting when viewed from the Festival Plaza and marina areas, etc. Another requirement in this policy states that, with a few stated exceptions, no more than 50% of the total roof area of the structures shall exceed forty (40) ft. in height and no more than 25% of the same roof area shall exceed 50 ft. in height. As proposed, buildings 7, 8, and 9 exceed forty (40) ft. in height but the City does not provide justification on how it does so consistent with this policy. Therefore, an appeal must be filed to ensure that the proposed project adheres to LCP policies regarding coastal public views.

The certified LCP for the Dana Point Harbor emphasizes that the priority uses of the harbor are beach access and recreational boating and other water craft uses and the parking supporting these uses, including the public boat launch facility, dry boat storage and recreational and marina parking. These uses have priority over the retail and restaurant uses of the proposed Commercial Core project. Policies in the Land Use Plan that emphasize priority uses include the following: Policy 4.2.2-6, 4.4.1-2, 4.4.1-3, 4.4.1-6 and 5.1.1-8. Policies in the District Regulations that also emphasize priority uses include the following: Policy 5.5 found in the Day Use Commercial-Planning Area 2 (Chapter 5 of the District Regulations), and Policies 14.2 and 14.6 in the Off-Street Parking Standards and Regulations (Chapter 14 of the District Regulations). The project as approved by the City does not appear to phase the construction of the Commercial Core in a manner that adequately retains existing dry boat storage spaces during the 5-year construction period and relocates all existing dry boat storage spaces to an unidentified off-site location. Further, the project does not retain adequate land area to provide the minimum four hundred ninety-three (493) dry boat storage spaces required in the LCP, should a future boat storage facility not ultimately be applied for, approved and constructed. Thus, the City's approval raises an issue as to whether the project is consistent with the LCP policies that protect priority uses. Therefore, an appeal must be filed to ensure that the proposed project adheres to LCP policies regarding the protection of priority uses.

The proposed project is located within Dana Point Harbor and is subject to impacts from flooding or damage from erosion, sea-level rise, waves, storm surge or seiches. In order to assess these impacts and to prepare and plan for them, the City's LCP includes standards and policies to address these hazards. The Land Use Plan (LUP) includes a number of standards to address these hazards concerns, one specifically being Policy 8.6.3-1, which requires a Shoreline Management Plan. This plan would evaluate these hazards and then provide *recommendations for protection of existing and proposed development, public improvements, coastal access, public opportunities for coastal recreation and coastal resources. Plan must also evaluate the feasibility of hazard avoidance, planned retreat, retrofitting existing or proposing new protection devices and restoration of the sand supply and beach nourishment in appropriate areas of the Harbor, if needed.* The City's District Regulations also include a number of policies to address hazards, including but not limited to Policy 11 found in the General Regulations and Special Provisions section (Chapter 3 of the District Regulations) that requires the submittal of a Shoreline Management Plan prior to or concurrent with the first coastal development permit for development of the commercial core. The project included a Shoreline Management Plan and part of it includes a wave uprush study that indicates the commercial core development will be exposed to wave overtopping and flooding during a 100-year storm event, as soon as 2015, even under the smallest increase in predicted sea level rise

due to climate change. The LCP requires the applicant take such hazards into account and address them in this new development. Other than constructing the development in conformance with current FEMA flood standards (i.e. 1 foot above base flood elevation) it does not appear the flood hazard has been adequately addressed. Therefore, the City's approval must be appealed to ensure that coastal hazards are adequately addressed as is required in the LCP.

The LCP includes standards and policies in the Land Use Plan and District Regulations for the submittal of a comprehensive Dana Point Harbor Sign Program. For example, the LUP includes Policy 4.3.1-7 and 8.5.3-6 and the IP includes Policy 38 found in the General Regulations and Special Provisions section (Chapter 3 of the District Regulations) that requires that a comprehensive Sign Program be developed prior to occupancy of any new development in the Commercial Core area of the Harbor. The applicant has submitted sign program, but that plan is limited to the Commercial Core area and is not comprehensive for the entire harbor. The Commercial Core project will have effects on access and circulation throughout the harbor that need to be addressed concurrent with the Commercial Core development. Therefore, an appeal must be filed to ensure LCP requirements related to signage are addressed in conjunction with the Commercial Core project.

The LCP includes standards and policies in the Land Use Plan and District Regulations for the submittal of a Transportation Demand Management Plan. For example, the LUP includes Policy 6.2.1-4 and 6.2.3-2 and the IP includes Policy 28 found in the General Regulations and Special Provisions section (Chapter 3 of the District Regulations) and Policy 14.6 found in the Off-Street Parking Standards and Regulations section (Chapter 14 of the District Regulations) that requires a Parking Management Plan that includes within it a Transportation Demand Management Plan as part of the first application for a coastal development permit for Revitalization Plan improvements in the Commercial Core, a Parking Management Plan that includes within it a Transportation Demand Management Plan. The applicant has submitted a Transportation Demand Management Plan; however, a Parking Management Plan has not been submitted and therefore it is unclear how these two plans work together and if they are consistent with the policies of the LCP. Thus, without the ability to evaluate how these two plans work in unison, it is difficult to determine if the Transportation Demand Management Plan provides sufficient measures to facilitate parking and circulation within the harbor as well as linking areas outside the harbor. Therefore, it is unclear if the applicant's Transportation Demand Management Plan is consistent with the LCP and is a reason for appealing the proposed project.

The City's LCP provides policies to protect coastal public views, emphasize and protect priority uses in the harbor, evaluate hazard impacts, and establish a sign program, as well as, transportation demand measures; however, the project, as proposed, raises issues as to consistency with the Dana Point LCP. Accordingly, an appeal of the local action must be made to assure that any approved development is consistent with the requirements of the certified Dana Point Local Coastal Program.

Local Government Permit No.: City of Dana Point CDP13-0018

Applicant: County of Orange-Dana Point Harbor Dept.

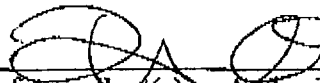
Project: Dana Point Harbor Commercial Core

Project Location: 24650 Dana Point Harbor Drive, Dana Point, Orange County

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 7/7/14

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

N/A - Not Applicable

to act as my/our representative and to bind me/us in all matters concerning this appeal.

N/A

Signature of Appellant(s)

Date: N/A

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.


Signature of Appellant(s) or
Authorized Agent

Date 7/8/14

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____