



RE-ISSUED NOTICE OF PREPARATION SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

Date: December 21, 2009
Subject: Re-Issue Notice of Intent to Prepare a Draft Subsequent Environmental Impact Report
Project Title: Dana Point Harbor Marina Improvement Project SCH No. 2003101142
Applicant: OC Dana Point Harbor

This Notice of Preparation (NOP) is being re-issued by OC Dana Point Harbor (County) for the proposed waterside Marina Improvement Project in the City of Dana Point (City). The original NOP was circulated from November 27, 2007 to January 2, 2008 to inform Responsible and Trustee Agencies, and the interested public that a Subsequent Environmental Impact Report (SEIR) was being prepared for the Marina Improvement Project. Due to the length of time that has passed, this NOP is being re-issued. The County is the lead agency for the project and will prepare the SEIR in accordance with the requirements of the California Environmental Quality Act (CEQA) and the CEQA implementing guidelines (Guidelines). This NOP is being circulated pursuant to California Public Resources Code Section 21153(a) and CEQA Guidelines Section 15082.

The Land Use Plan component of the Local Coastal Program Amendment (LCPA) for the proposed Dana Point Harbor Revitalization Project was approved with suggested modifications by the California Coastal Commission (Commission) on October 8, 2009. The waterside portion of the project is now proceeding through a separate, independent process for environmental clearance and approval. As part of the Commission's approval, a suggested modification was included to establish a goal for any dock replacement to attempt to achieve a "no net loss" of slips harborwide, but to limit the loss of boat slips to a maximum of 155 slips with an average slip length not to exceed 32 feet. In the event that the replacement of docks requires a reduction in the quantity of slips in existing berthing areas, the policy revision also provides that those slips should be replaced, if feasible in new berthing areas elsewhere in the harbor. No other changes in the project description for the Marina Improvement Project have occurred since the circulation of the previous NOP in November 2007.

The Marina Improvement Project (Project) renovations include removal of nearly all floating docks and piles in the West and East Marinas; potential repair and/or reconstruction of portions of the quay wall; and installation of new docks, guide piles (or alternate anchoring methods), gangways, security gates, dock boxes, improved lighting on the docks and supporting utilities within both marina areas. Additionally, new dry stack storage staging docks and dinghy docks, along with renovations to the OC Sailing and Event Center docks, guest docks, Harbor Patrol docks, commercial fishing docks, and sport fishing docks are included in the proposed Project. The project also includes public access improvements to gangways and docks in compliance with the Americans with Disabilities Act (ADA) guidelines, and construction of temporary docks the along the breakwater adjacent to Doheny State Beach.

Potential Responsible Agencies, federal agencies involved in funding or approving the project, and Trustee Agencies are invited to comment regarding the scope and content of the environmental information to be included in the SEIR, relevant to your agency's statutory responsibilities in connection with the proposed project. The project location map is included with this NOP. Based on the analysis contained in the IS, the probable environmental effects of the project to be analyzed in the DSEIR, include but are not necessarily limited to the following: aesthetics, air quality, biological resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, recreation, transportation and traffic, and utilities. Responses received to this NOP may modify or add to the preliminary assessment of potential issues addressed in the SEIR.

A complete copy of the original NOP prepared for the proposed project may be reviewed at OC Dana Point Harbor office located at, 24650 Dana Point Harbor Drive, Dana Point, California 92629, or online at www.dphplan.com. Because of time limits mandated by State law, your response must be sent at the earliest possible date but *not later than 30 days* after receipt of this notice. The County will accept comments from agencies and others regarding this notice through the close of business on **January 20, 2010**. All comments to this notice must be submitted in writing to the following address, or by e-mail as indicated below:

OC Dana Point Harbor
24650 Dana Point Harbor Drive
Dana Point, CA 92629

Attention: Brad Gross, Director
Phone: (949) 923-2236
Marinaeir@dphd.ocgov.com

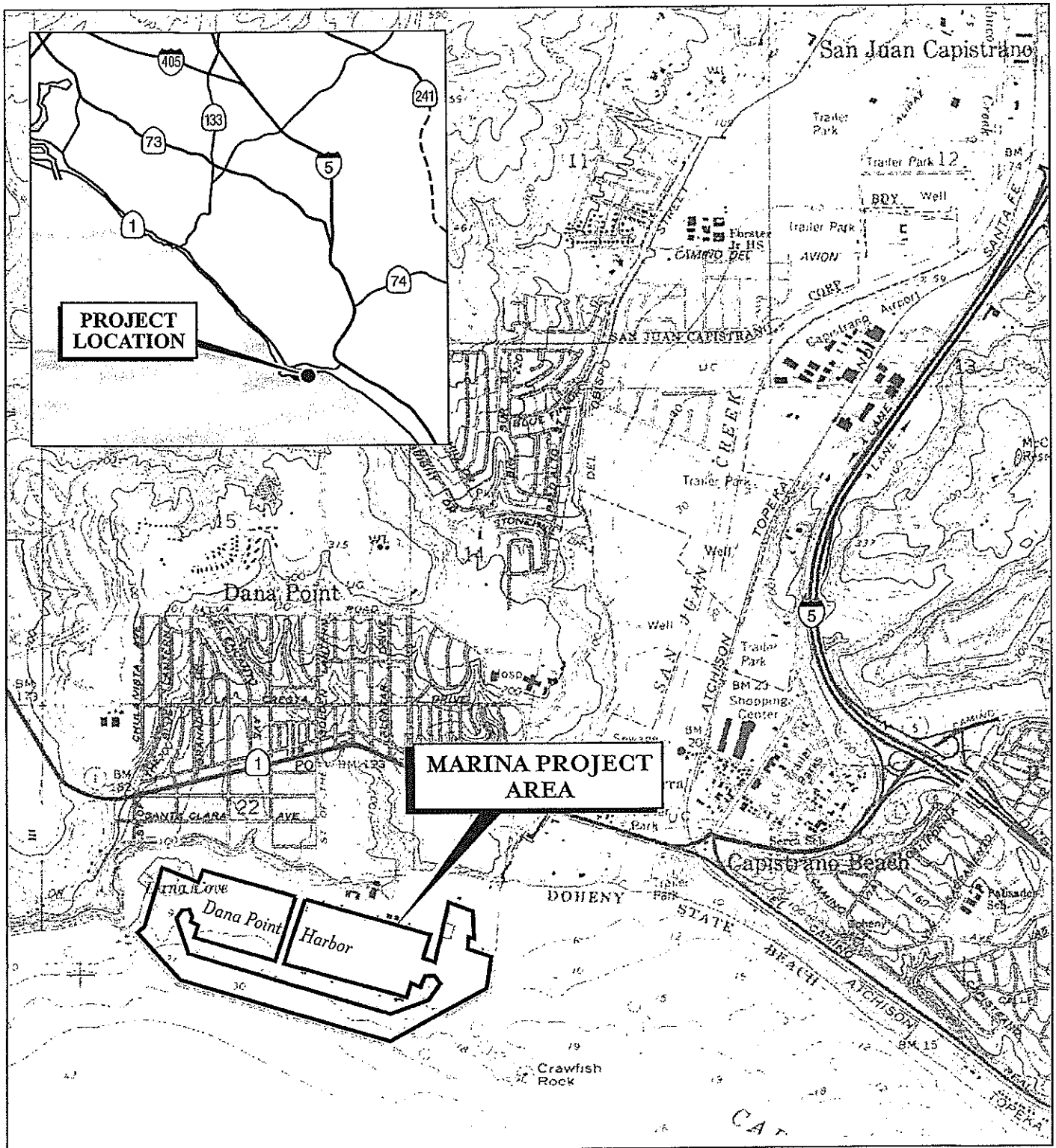
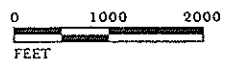


FIGURE 1

LSA



SOURCE: USGS 7.5' Quadrangle, "Dana Point, Calif."

Dana Point Harbor Marina Improvement Project
Project Location



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

January 8, 2010

Mr. Brad Gross, Director
County of Orange
OC Dana Point Harbor
24650 Dana Point Harbor Drive
Dana Point, CA 92629

01-25-10A09101 REV0

Dear Mr. Gross:

Notice of Preparation of a Draft Subsequent Environmental Impact Report (Draft SEIR) for the Dana Point Harbor Marina Improvement Project

The South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to comment on the above-mentioned document. The SCAQMD's comments are recommendations regarding the analysis of potential air quality impacts from the proposed project that should be included in the draft environmental impact report (SEIR). Please send the SCAQMD a copy of the Draft SEIR upon its completion. **In addition, please send with the draft SEIR all appendices or technical documents related to the air quality analysis and electronic versions of all air quality modeling and health risk assessment files. Electronic files include spreadsheets, database files, input files, output files, etc., and does not mean Adobe PDF files. Without all files and supporting air quality documentation, the SCAQMD will be unable to complete its review of the air quality analysis in a timely manner. Any delays in providing all supporting air quality documentation will require additional time for review beyond the end of the comment period.**

Air Quality Analysis

The SCAQMD adopted its California Environmental Quality Act (CEQA) Air Quality Handbook in 1993 to assist other public agencies with the preparation of air quality analyses. The SCAQMD recommends that the Lead Agency use this Handbook as guidance when preparing its air quality analysis. Copies of the Handbook are available from the SCAQMD's Subscription Services Department by calling (909) 396-3720. Alternatively, the lead agency may wish to consider using the California Air Resources Board (CARB) approved URBEMIS 2007 Model. This model is available on the SCAQMD Website at: www.urbemis.com.

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the project and all air pollutant sources related to the project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, that is, sources that generate or attract vehicular trips should be included in the analysis.

The SCAQMD has developed a methodology for calculating PM_{2.5} emissions from construction and operational activities and processes. In connection with developing PM_{2.5} calculation methodologies, the SCAQMD has also developed both regional and localized significance thresholds. The SCAQMD requests that the lead agency quantify PM_{2.5} emissions and compare the results to the recommended PM_{2.5} significance thresholds. Guidance for calculating PM_{2.5} emissions and PM_{2.5} significance thresholds can be found at the following internet address: http://www.aqmd.gov/ceqa/handbook/PM2_5/PM2_5.html.

In addition to analyzing regional air quality impacts the SCAQMD recommends calculating localized air quality impacts and comparing the results to localized significance thresholds (LSTs). LST's can be used in addition to the recommended regional significance thresholds as a second indication of air quality impacts when preparing a CEQA document. Therefore, when preparing the air quality analysis for the proposed project, it is recommended that the lead agency perform a localized significance analysis by either using the LSTs developed by the SCAQMD or performing dispersion modeling as necessary. Guidance for performing a localized air quality analysis can be found at <http://www.aqmd.gov/ceqa/handbook/LST/LST.html>.

In the event that the proposed project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the lead agency perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment ("Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis") can be found on the SCAQMD's CEQA web pages at the following internet address: http://www.aqmd.gov/ceqa/handbook/mobile_toxic/mobile_toxic.html. An analysis of all toxic air contaminant impacts due to the decommissioning or use of equipment potentially generating such air pollutants should also be included.

Mitigation Measures

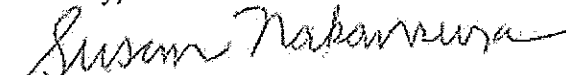
In the event that the project generates significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized during project construction and operation to minimize or eliminate significant adverse air quality impacts. To assist the Lead Agency with identifying possible mitigation measures for the project, please refer to Chapter 11 of the SCAQMD CEQA Air Quality Handbook for sample air quality mitigation measures. Additional mitigation measures can be found on the SCAQMD's CEQA web pages at the following internet address: www.aqmd.gov/ceqa/handbook/mitigation/MM_intro.html Additionally, SCAQMD's Rule 403 – Fugitive Dust, and the Implementation Handbook contain numerous measures for controlling construction-related emissions that should be considered for use as CEQA mitigation if not otherwise required. Other measures to reduce air quality impacts from land use projects can be found in the SCAQMD's Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning. This document can be found at the following internet address: <http://www.aqmd.gov/prdas/aqguide/aqguide.html>. In addition, guidance on siting incompatible land uses can be found in the California Air Resources Board's Air Quality and Land Use Handbook: A Community Perspective, which can be found at the following internet address: <http://www.arb.ca.gov/ch/handbook.pdf>. CARB's Land Use Handbook is a general reference guide for evaluating and reducing air pollution impacts associated with new projects that go through the land use decision-making process. Pursuant to state CEQA Guidelines §15126.4 (a)(1)(D), any impacts resulting from mitigation measures must also be discussed.

Data Sources

SCAQMD rules and relevant air quality reports and data are available by calling the SCAQMD's Public Information Center at (909) 396-2039. Much of the information available through the Public Information Center is also available via the SCAQMD's World Wide Web Homepage (<http://www.aqmd.gov>).

The SCAQMD is willing to work with the Lead Agency to ensure that project-related emissions are accurately identified, categorized, and evaluated. Please call Daniel Garcia, Air Quality Specialist, CEQA Section, at (909) 396-3304 if you have any questions regarding this letter.

Sincerely,



Susan Nakamura
Planning Manager
Planning, Rule Development and Area Sources

SN:DG:AK
ORC100106-04AK
Control Number

From: Tom S [mailto:deboatman@sbcglobal.net]
Sent: Tuesday, January 12, 2010 9:07 PM
To: MarinaEIR
Cc: \ 'Rodger Beard\
Subject: Comments on NOP Project SCH 2003101142

Dear Sirs,
I would like to comment on the proposed waterside improvement project in Dana Point Harbor.

I have concerns regarding the limited plan options that have been presented to the boaters in the past. All of the options included both channel narrowing and 1/3 double wide slips. Why were there no options that included no channel narrowing or no double wide slips? I voted on the 4 plans presented last year, but none of the designs were my preference since I really think double wide slips are a mistake and do not give you any benefit for the amount of inconvenience that all the boaters will receive. When initially polled, 84% of the boaters opposed double wide slips. So the DPHD is still ignoring this and including this in all design options. When I had communications with the waterside project consultant (Jon Conk) , he explained that there would be about a 9-10% savings for the double wides. So you would inconvenience 300 boaters forever to save 30 slips? The cost / benefit does not seem to make much sense. The same goes for channel narrowing. If you are in the harbor on any summer weekend, you would see how crowded the main channel is and how hard it is to navigate. The reality is that narrowing the channel would create many dangerous situations for boaters, kayakers and paddle boarders alike.

Please expand the options presented to the boaters to exclude these designs for our fine harbor. Very few want them, but you have continually included them in every one of your past plan options to the boaters.

Thank you.

Tom Smith
slip renter
East Basin

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: de_nahc@pacbell.net



January 26, 2010

Mr. Brad Gross

COUNTY OF ORANGE**DANA POINT HARBOR DEPARTMENT**

24650 Dana Point Harbor Drive
Dana Point, CA 92629

Re: SCH#2003101142 CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Dana Point Harbor Marina Improvement Project; located in the City of Dana Point, Orange County, California

Dear Mr. Gross:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. (Also see *Environmental Protection Information Center v. Johnson* (1985) 170 Cal App. 3rd 604) The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE - City Boundaries. However, there are Native American cultural resources in close proximity.

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 11..

Consultation with tribes and interested Native American tribes and individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f])*et se*,

36 CFR Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq*) and NAGPRA (25 U.S.C. 3001-3013), as appropriate. .

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of "historic properties of religious and cultural significance" may also be protected the under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

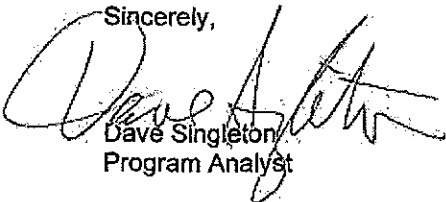
CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

Native American Contacts
Orange County
January 26, 2010

Juaneno Band of Mission Indians Acjachemen Nation
David Belardes, Chairperson
32161 Avenida Los Amigos Juaneno
San Juan Capistrano CA 92675
DavidBelardes@hotmail.com
(949) 293-8522
(949) 493-4933 - Home

Juanefio Band of Mission Indians
Sonia Johnston, Tribal Chairperson
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
sonia.johnston@sbcglobal.
(714) 323-8312

Juaneno Band of Mission Indians Acjachemen Nation
Anthony Rivera, Chairman
31411-A La Matanza Street Juaneno
San Juan Capistrano CA 92675-2674
arivera@juaneno.com
(949) 488-3484

Juaneno Band of Mission Indians
Anita Espinoza
1740 Concerto Drive Juaneno
Anaheim , CA 92807
(714) 779-8832

(530) 354-5876 - cell

Juaneno Band of Mission Indians
Alfred Cruz, Culural Resources Coordinator
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
alfredgcruz@sbcglobal.net
714-998-0721
714-998-0721 - FAX
714-321-1944 - cell

United Coalition to Protect Panhe (UCPP)
Rebecca Robles
119 Avenida San Fernando Juaneno
San Clemente CA 92672
(949) 573-3138

Juaneno Band of Mission Indians
Adolph 'Bud' Sepulveda, Vice Chairperson
P.O. Box 25828 Juaneno
Santa Ana , CA 92799
bssepul@yahoo.net
714-838-3270
714-914-1812 - CELL
bsepul@yahoo.net

Juaneno Band of Mission Indians Acjachemen Nation
Joyce Perry
4955 Paseo Segovia Juaneno
Irvine , CA 92612
949-293-8522

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2003101142; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Dana Harbor Marina Improvement Project; located in the City of Dana Point; Orange County, California.



Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
5796 Corporate Avenue
Cypress, California 90630

Arnold Schwarzenegger
Governor

January 27, 2010

Mr. Brad Gross, Director
Orange County, Dana Point Harbor Department
24650 Dana Point Harbor Drive
Dana Point, California 92629

RE-ISSUED NOTICE OF PREPARATION FOR A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE DANA POINT HARBOR MARINA IMPROVEMENT PROJECT (SCH# 2003101142), ORANGE COUNTY

Dear Mr. Gross:

The Department of Toxic Substances Control (DTSC) has received your submitted re-issued Notice of Preparation (NOP) for a draft Environmental Impact Report (EIR) for the above-mentioned project. The following project description is stated in your document: "The Dana Point Harbor Marina Improvement Project (Project) is located within the City of Dana Point (City) at Dana Point Harbor (Harbor) in Capistrano Bay on the Southern Orange County (OC) coastline, between Los Angeles and San Diego Counties. The Project includes the removal of nearly all floating docs and piles in the West and East Marinas; potential repair and/or reconstruction of portions of the quay wall; and installation of new docks, guide piles (or alternate anchoring methods), gangways, security gates, dock boxes, improved lighting on the docks and supporting utilities within both marina areas. Additionally, new dry stack storage staging docks, star moorings and dinghy docks, along with renovations to the OC Sailing and Event Center docks, guest docks, Harbor Patrol docks, commercial fishing docks, and sport fishing docks are included in the proposed Project. The Harbor is bordered by the Pacific Ocean to the south; Dana Point Headlands and Old Cove Marine Preserve to the west; Doheny State Beach to the east; and a variety of commercial, hotel, residential, and park uses to the north". DTSC has the following comments:

- 1) The EIR should identify the current or historic uses at the project site that may have resulted in a release of hazardous wastes/substances, and any known or potentially contaminated sites within the proposed Project area. For all identified sites, the EIR should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the pertinent regulatory agencies:

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Mr. Brad Gross, Director
January 27, 2010
Page 2

- National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).
 - EnviroStor: A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
 - Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
 - Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
 - Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
 - Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
 - Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
 - The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).
- 2) The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents. Please see comment No.11 below for more information.
- 3) All environmental investigations, sampling and/or remediation for the site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found should be clearly summarized in a table.

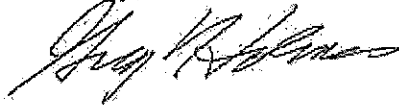
- 4) Proper investigation, sampling and remedial actions overseen by the respective regulatory agencies, if necessary, should be conducted at the site prior to the new development or any construction. All closure, certification or remediation approval reports by these agencies should be included in the EIR.
- 5) If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.
- 6) Project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.
- 7) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. If it is found necessary, a study of the site and a health risk assessment overseen and approved by the appropriate government agency and a qualified health risk assessor should be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.
- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.

Mr. Brad Gross, Director
January 27, 2010
Page 4

- 9) If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented.
- 10) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties under CERCLA, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov or by phone at (714) 484-5491.

Sincerely,



Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
1001 I Street, 22nd Floor, M.S. 22-2
Sacramento, California 95814
ADelacr1@dtsc.ca.gov

CEQA # 2781

From: Michael Murphy [mailto:mpmurphy@moranandco.com]
Sent: Monday, January 11, 2010 2:46 PM
To: MarinaEIR
Subject: re-issued NOP

I received your notice of preparation for the SEIR dated January 5, 2010. Although the notice states that the re-issued NOP is available at www.dphplan.com, I am finding it difficult to find a clear link to the document(s) from the main website. Can you please send me a direct link to the document so that I may review?

Thank you,

Michael Murphy
Director

Moran & Company
2211 Michelson Drive, Suite 1170
Irvine, CA 92612

949.242.4050 x8404
949.242.4060 fax

mpmurphy@moranandco.com
www.moranandco.com

Initial Study – Public Comments

As this is an update Boaters for Dana Point Harbor are resending an earlier document with track changes on. In the spirit of making work as easy as possible for everyone we hope that the County will extend a similar courtesy. Thank you for the opportunity to submit the following comments for:

Re-Issue Notice of Intent to Prepare a Draft Subsequent Environmental Impact Report,

Project: Dana Point harbor Marina Improvement Project SCH No. 2003101142.

The Notice of Preparation states that the Draft Subsequent Environmental Impact Report will be available in area libraries and in OC DPH offices. We respectfully ask that the Draft Subsequent Environmental Impact Report be release electronically and not locked down as images. This will facilitate maximum public involvement.

Regards,
Boaters for Dana Point Harbor
Bruce Heyman
949 289-8400
BruceHeyman@cox.net

Procedural

1. The Dana Point Harbor Department (now OC DPH) should not be the Lead Agency for the Subsequent Environmental Impact Report.
 - a. Discussion
 - i. The California Environmental Quality Act is a “self-executing statute”
 - ii. Which is enforced, as necessary, by the public through litigation and the threat thereof
 - iii. As the Dana Point Harbor Department has declared itself the “Lead Agency”
 - iv. In this case the Dana Point Harbor Department is also the “Applicant”.
 - v. While there is significant precedent where the “Lead Agency” and the “Applicant” are the same governmental organization there is an expectation that there will be the required safeguards to insure the “Applicant” is doing a thorough job
 - vi. Furthermore the “Lead Agency” is required to perform such duties that are required to insure the validity of the “Applicant’s” submittal
 - vii. In this case the “Lead Agency”, Dana Point Harbor Department has shown a clear desire to politicize the process while also

- demonstrating a serious lack of reverence for the Subsequent Environmental Impact Report process at the Scoping Meeting
- viii. Many of the participants and speakers were there at the behest of the Dana Point Harbor Department to state, for the record, their desire to see the “Revitalization of the Harbor” to move forward as already planned. Most made these comments with no discussion of environmental issues.
 - ix. The Dana Point Boaters Association was asked by the Dana Point Harbor Department to minimize speakers so as to allow others time to talk
 - x. The Dana Point Boaters Association was also asked by the Dana Point Harbor Department to help keep boaters focused on environmental issues as opposed to slip design issues
 - xi. The Dana Point Harbor Department encouraged proponents of the plan; brokers, restaurant owners/operators, harbor merchants and marina operators (agents of the Dana Point Harbor Department) to provide as many speakers as possible and did not encourage them to speak to environmental issues
 - xii. Public involvement in the process was envisioned to be a vital element of the California Environmental Quality Act
 - xiii. Statements made by the Dana Point Harbor Department at the beginning of the Scoping Meeting implied that public comments and participation in the process will result in unnecessary delays, and increased costs.
- b. Recommendation
- i. The County of Orange should appoint a new “Lead Agency” to provide proper oversight of the Dana Point Harbor Department, “Applicant”.
 - 1. This will help to insure the validity of the Subsequent Environmental Impact Report
 - 2. Reduce the possibility of avoidable delays due to litigation or the threat there of
 - 3. Insure the optimal use of funds and resources

~~2. Work on the Subsequent Environmental Impact Report should be place on hold until the Waterside Design has been completed.~~

~~a. Discussion~~

- ~~i. Design must be completed enough to insure all environmental impacts are studied~~
- ~~ii. The Final Environmental Impact Report approved by the County Board of Supervisors on 1/31/06 was Programmatic with respect to the Waterside Project because the design was not yet complete~~
- ~~iii. The Waterside design is still not complete~~
- ~~iv. It is likely that the final design will have a different number of slips/boats from the County’s currently stated favored plan~~

- ~~v. It is very possible that these changes will not accommodate a “Negative Declaration” in effect negating the bulk of the work required to complete the Subsequent Environmental Impact Report~~
- ~~vi. County stated at the Scoping Meeting that the design can still be changed but failed to articulate a process or procedure for these possible changes~~
- ~~b. Recommendation~~
 - ~~i. Suspend all work (time and money) on the Subsequent Environmental Impact Report and~~
 - ~~ii. Establish a process to collaboratively conclude the design phase~~

Initial Study Comments

~~3-2.~~ The Subsequent Environmental Impact Report must deal with the offsite as well onsite locations affected by this project.

- a. Discussion
 - i. {IS Page 2-4 item 2} “all answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
 - ii. As a result of the Waterside Project there will be Displace Boats (approximately ~~1100-???~~ boats displaced to accommodate approximately ~~750-???~~ to move in) [some of this displacement is already happening as a result of policies implemented by the Dana Point Harbor Department and their agents].
 - iii. The approximately ~~1100-???~~ boats will have to go somewhere,
 - 1. Some will be allowed to stay as a result of “right sizing” provided the families can afford this choice long term
 - 2. Given that there are already over ~~600-683~~ dry storage boats in the “Commercial Core” being forced into the dry stack (400) and mast up storage (93) there will not be enough space available for this boats within the already approved Commercial Core Final Environmental Impact Report
 - 3. The South Coast Water District is on record stating that they will not sell their property on Stone Hill Rd.
 - 4. Use of the South Coast Water District property as mitigation for displacing boat storage in the Harbor must be considered speculative at this point given the current state of boater acceptance and where South Coast Water District is in the process of the proposed site build out
 - 5. Dry storage, under the management of Vintage Marina Partners has been allowed to implement massive storage fee increases (10% for each of the last three years). This is distorting true demand for in harbor storage.
 - iv. {IS Page 3-12 item a} new offsite boat storage areas will/may likely have “impervious surfaces” whose impacts must be studied
 - v. {Page 2-7 #4 and page 3-8} Geology and Soils

~~v.~~vi. Additional Traffic considerations must be accommodated as it was not fully accounted for in FEIR 541

b. Recommendation

- i. The Dana Point Harbor Department must identify all locations where the displaced boats will likely be stored
- ii. The Dana Point Harbor Department must study the environmental impacts of these storage areas as part of this Subsequent Environmental Impact Report
- iii. The Dana Point Harbor Department must study geology and soil conditions of all areas where displaced boats are going
- ~~iii.~~iv. The OC Dana Point Harbor must study the traffic issues associated with any changes in circulation and storage locations.

~~4.3.~~ 4.3. Consultation – The Dana Point Boaters Association Boaters for Dana Point Harbor are-is requesting Consultation

a. Discussion

- i. Article 7. EIR Process Section 15086. Consultation Concerning Draft EIR
- ii. The Lead agency may consult directly with:
- iii. 2) any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

b. Recommendation

- i. Dana Point Harbor Department will consult directly with ~~Dana Point Boaters Association~~ Boaters for Dana Point Harbor on the Subsequent Environmental Impact Report

~~5.4.~~ 5.4. The Final Environmental Impact Report needs to be refreshed as a part of this Subsequent Environmental Impact Report.

a. Discussion

- i. {IS Page 2-6 1 b)} Applicable Land Use Plan
- ii. Final Environmental Impact Report approved 1/31/2006
- iii. Dana Point City Council approve the Commercial Core Local Coastal Plan Amendment on 10/06
- iv. Material differences (dry stack, # and size of restaurant/store expansion) that affect boaters that now need to be re-studied.
- v. 53% increase in commercial core and significant reduction in every element of recreational boating (dedicated boater parking, trailer/tow vehicle parking, ship yard, rest room access, mast up storage, and number of locations for storing boats.)
- vi. {IS page 3-3 item b} County of Orange should not be allowed to category this area as a “Regional Recreation Area” given the displacement of recreational boating activities in favor of expanded commercial interests

b. Recommendation

- i. Re-examine all relevant issues within the Final Environmental Impact Report that were affected by changes made since 1/31/06 approval:
 1. Due to Dana Point City's LCPA process
 2. Impacts due to the waterside development that were not adequately covered

~~6.5.~~ Channel Narrowing will required proper study

- a. Discussion
 - i. {IS Page 2-9 d} Increased Hazards
 - ii. Channel Narrowing will present a Potentially Significant Impact
- b. Recommendations
 - i. Initial Study Item 6 d) must be coded as Potentially Significant Impact and handled/studied appropriately

~~7.6.~~ The statement is made, without explanation, that the "...future LCPA will improve overall Coastal Act compliance" {IS Page 3-2}

- a. Discussion
 - i. Changes to the plan should be considered from a base line of the existing Local Coastal Programs and not from the current situation
 - ii. Many changes have occurred without the benefit of Environmental Impact Reports or California Coastal Commission oversight.
 - iii. Why is base line for this SEIR not the official LCP vs what the County and City has allowed to be taken away from boaters without formal process
 - iv. Why has compliance to existing LCP not been managed by County and City?
 1. East Cove (small slips eliminated for larger)
 2. Several areas in West (small eliminated for larger)
 3. Significant non compliance with dedicated boater parking requirements
 4. Significant takeaways from Trailer/Tow Vehicle parking
 5. Elimination of 100's of smaller slips in favor of larger (right sizing implemented by marina companies)
 6. Increase in broker slips
 7. Increase commercial activity out side of Sports Fishing area.
 - v. Why has the LCP not received the 5 year reviews audited as required by Coastal law?
- b. Recommendation
 - i. Reset baseline for all Environmental impacts to existing Local Coastal Programs including this SEIR

~~8.7.~~ The Final Environmental Impact Report under stated the potential impact from slip and dry storage loss on local transportation

- a. Discussion
 - i. {IS Page 3-14} Transportation Final Environmental Impact Report
 - ii. By only examining the “Macro” delta numbers the true impact of the change is lost
 - 1. Approximately ~~620-683~~ dry storage boats competing for 493 storage locations in the new plan
 - 2. Approximately ~~1400-???~~ boats competing for approximately ~~261-???~~ slips in the 29’ and under category
 - 3. Expectation that these displaced boaters, approximately ~~1100-???~~ will be come trailer boaters
 - iii. Trailer boaters place a heavier load on local roads.
- b. Recommendation
 - i. Examine traffic loading along roads in and adjacent to Harbor based on new estimate of trailer boaters.

9.8. Assume that these sections will be updated per the Coastal Commission Action taken on October 8, 2009 Mischaracterization of Design Implication due to change in slip configuration

- a. Discussion
 - i. {IS Page 2.1 Section 9} County states that average slip size will be “Slightly Larger”
 - ii. 13.77% is not a slight increase
 - iii. This issue is further confused by the County’s use of “finger” size of slip vs. the size of boat that will be allowed in the slip
 - iv. Issue c. above understates the average slip size by at least 3’
 - v. Use of the word “Slightly Larger” does not set the right frame of reference for agency and public evaluation
- b. Recommendations
 - i. Restate numbers in a non-distorting manner
 - 1. Do not limit published numbers to the Dana Point Harbor Departments 4 size categories
 - 2. Use at least 9 size categories
 - 3. Articulate all slip configuration changes from original Harbor Design, not current or estimated actual
 - ii. Using restated numbers re-evaluate impacts identified and studied in the Final Environmental Impact Report
 - iii. Using restated numbers re-evaluate impacts identified for study in the Subsequent Environmental Impact Report

10.9. Local and County Public Services may be affected by this plan

- a. Discussion
 - i. {IS page 2-13 # 15} Public Services
 - ii. Pushing ~~1100-???~~+ boats out of the Harbor and into the community may adversely affect the provision of services (police, fire, EMT, water, sewer, maintenance....)
- b. Recommendation

- i. Evaluate Public Services impact as a result of this waterside project

~~11.10.~~ Population & Housing will be affected by this project

a. Discussion

- i. {IS Page 2-6 #3. B & C Also Page 3-5 b and c} Live-A-Boards
- ii. Boats are considered second homes
- iii. Over ~~1100-????~~ boats in the water will be displaced
- iv. Over ~~100-???~~ boats on the land are being displaced
- v. Live aboard policy in the Harbor has become more restrictive since the Dana Point Harbor Department took the leases back
- vi. The target 3% live-a-boards are not being achieved due to the restrictive policies
- vii. Harbor safety is less than it could be with a more robust live-a-board program

b. Recommendations

- i. Evaluate Environmental Impact of
 - 1. Achieving 3% Live-A-Board
 - 2. Achieving 10% Live-A-Board
- ii. Evaluate Environmental Impact of over ~~1100-????~~ water side and over ~~100-???~~ potential second homes being eliminated

~~12.11.~~ Introduction of new purposes for Revitalization Design

a. Discussion

- i. {IS Page 1-3} Dana Point Harbor Department is introducing new language for goals
- ii. Task Force was formed to identify 12 Goals of Project
- iii. This Initial Study adds new goals "...and expand existing landside Harbor facilities to meet current and projected needs of the merchants and Harbor visitors..."
- iv. Final Environmental Impact Report was approved by County Board of Supervisors on 1.31.06
- v. Local Coastal Program Amendment was approved by Dana Point City Council in October of 2006

b. Recommendation

- i. Drop, unapproved, new purposes.

~~13.12.~~ Inundation by seiche, tsunami or mudflow

a. Discussion

- i. {A – IS Page 2-8 J} Inundation by seiche, tsunami, or mudflow?
- ii. Recent modest rain has shown that water run off in Harbor can be significant
- iii. City and County have identified tsunami escape routs that will be affected by:
 - 1. construction within the harbor
 - 2. increase commercial traffic due to commercial expansion

3. increased trailer/tow vehicle traffic due to increased numbers of trailer boaters

- b. Recommendation

- i. Acknowledge possible impacts and include in study for Subsequent Environmental Impact Report

~~14.13.~~ 13. Communities will be Physically Divided

- a. Discussion

- i. {A – IS Page 2-6 1 a)} Physically divide an established community
- ii. West marina will be layout out in a similar format to the east marina.
- iii. Many Boaters feel their community or “neighborhood” will be disrupted

- b. Recommendation

- i. Potential impact level should be increased and studied as part of the Subsequent Environmental Impact Report

~~15.14.~~ 14. Land Use Mischaracterization

- a. Discussion

- i. {IS Page 3-2} Land Use Changes Mischaracterization of Facts
- ii. Significant land use changes and allocations are occurring on the land as a result of this project.
 1. Boat storage
 2. Boater Parking
 3. Access to bathroom facilities
 4. Trailer/tow vehicle parking
 5. Ship yard size

- b. Recommendation

- i. Provide detailed land use, in terms of acres or square feet, of planning areas one and two.
- ii. Re-examine Final Environmental Impact Report and examine Subsequent Environmental Impact Report implications of these significant Land Use Plan Changes.

~~16.15.~~ 15. Boat Slip License Agreement

- a. Discussion

- i. The Dana Point Harbor Department has implemented an overly restrictive Boat Slip License Agreement
- ii. This Agreement significantly reduces tenant access to their boats
- iii. This policy will hopefully be remediated in the future

- b. Recommendation

- i. Prepare the Subsequent Environmental Impact Report based on a roll back to a less constrained tenant usage of their boats.

16. Re-Issued Notice of Preparation Notice

- a. Discussion

- i. The California Coastal Commission ruled on October 8, 2009 that the goal of a slip redesign project should have a goal of zero slip loss
- ii. Boaters for Dana Point Harbor have provided a possible solution for the waterside design that would achieve zero slip loss
- iii. Boaters for Dana Point Harbor have provided a possible solution for water sided design that will allow for larger slips
- iv. The county states that "...the total number of boat slips under the County's preferred design would decrease from 2,409 to 2,254, resulting in a net loss of 155 slips

b. Recommendation

- i. The County should adopt the Coastal Commission's directive as the preferred plan for the Subsequent Environmental Impact Report, namely zero slip loss.

17. Wind Shadow

a. Discussion

- i. The Dana Point Revitalization requires the construction of a 65' tall dry stack building to be constructed at the water's edge.
- ii. The Dry Stack will be leeward of the prevailing winds
- iii. The Dana Point Revitalization requires the construction of many 60' buildings\
- iv. These 60' buildings will cast a prevailing wind shadow over water areas
- v. The Dana Point Revitalization requires that a two story parking deck be constructed at the end of the launch ramp apron
- vi. The City of Dana Point is requiring that the parking deck be constructed such that it can be converted to a three story parking garage in the future
- vii. The two story parking deck or three story parking garage will create a wind shadow over the water if constructed in the currently planned location
- viii. Wind shadows create winds that are shifty both in direction and angle and hence
- ix. Can create a hazard to navigation for beginning, novice and even experienced sailors
- x. Vessel Assist often is required to help sail vessels past the existing, lower impact, wind shadows in the launch ramp area.

b. Recommendation

- i. A professional analysis of the impact of building height and location must be performed to properly evaluate the environmental factors associated with the waterside layout.

memo

DATE: February 5, 2010
TO: Brad Gross, Director, Dana Point Harbor Department
FROM: Manager, Environmental Resources
SUBJECT: Review of Reissued NOP for Subsequent EIR 591 for Dana Point Harbor Marina Improvement Project

In response to your request for input on the subject project, OC Watersheds has reviewed the subject document. It is recommended the following be addressed in the Subsequent EIR for the Proposed Dana Point Harbor Marina Improvement Project:

- 1) Synthesize the previous material related to water quality into one section in the new document, with respect to:
 - Final EIR 591 text dated 01/06
 - Appendix Water Quality Management Plan dated 12/20/05
 - Appendix Program Water Quality Management Plan dated 12/20/05
 - Related Project Design Features (4.4-1 – 4.4-3), Standard Conditions (4.4-4 – 4.4-14), and Mitigation Measures (none), as identified in the Final EIR text.
- 2) Note that as written the Standard Conditions currently require that a harbor-wide or site specific Water Quality Management Plan (WQMP) follow the County Local WQMP dated August 13, 2003. The Local WQMP is Exhibit A-7.VI of the County's Stormwater Local Implementation Plan and is the guidance document which applies to all new development and significant redevelopment projects in County controlled/unincorporated areas within the San Diego Regional Water Quality Control Board's (San Diego Regional Board) jurisdiction.

With the adoption of a fourth term Municipal Separate Storm Sewer System (MS4) Permit for south Orange County on December 16, 2009, the WQMP requirements will soon be significantly different. The fourth term MS4 Permit for the San Diego Region mandates that the permittees (cities and County) prepare and submit for Regional Board review, a "Model WQMP", within 12 months of permit adoption (by December 16, 2010). Within 180 days of the Regional Board's determination that the "Model WQMP" is in compliance with the permit, the permittees must update their "Local WQMP". Therefore, it is likely that by mid to late 2011, a new Local WQMP for the County will be in place and applicable for projects within Dana Point Harbor.


The new proposed WQMP program is currently under development by the permittees and it is difficult at this time to ascertain exactly what the impact to the Dana Point Harbor revitalization project will be. However, the following low impact development (LID) or "site design" concepts listed below will be required to be incorporated into the design where applicable and feasible:

- (a) Conserving natural areas, including existing trees, other vegetation, and soils.
- (b) Constructing streets, sidewalks, or parking lot aisles to the minimum widths necessary, provided that public safety is not compromised.
- (c) Minimizing the impervious footprint of the project.
- (d) Minimizing soil compaction to landscaped areas.
- (e) Minimizing disturbances to natural drainages (e.g., natural swales, topographic depressions, etc.);
- (f) Disconnecting impervious surfaces through distributed pervious areas; and
- (g) Where feasible, draining runoff from impervious areas (rooftops, parking lots, sidewalks, walkways, patios, etc) into pervious areas prior to discharge into the storm drains.

*

The most significant change when the new WQMP requirements become applicable in mid to late 2011 is that the on-site capture of the volume of runoff generated by the 24hr 85th percentile storm event will be required using LID BMPs which promote infiltration, evapotranspiration, and runoff harvest/re-use. The use of conventional structural treatment control BMPs to remove pollutants and discharge stormwater runoff from the 85th percentile storm event will only be permitted after conducting an exhaustive infeasibility determination. Even then, a waiver from the Regional Board and payment into an "in-lieu" program or water quality credit fund may be required. Unless a WQMP is approved for the project prior to these new requirements taking effect in mid to late 2011, there is no grandfathering of projects.

Thank you for the opportunity to comment on this document. If you require any further information on our response, please contact Grant Sharp at (714) 955-0674.



Chris Crompton