

**CALIFORNIA COASTAL COMMISSION**

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**W 11a**

March 29, 2011

**TO:** Commissioners and Interested Persons

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

**SUBJECT:** Revised Findings for Major Amendment No. 1-10 (Dana Point Harbor Implementation Plan) to the City of Dana Point Certified Local Coastal Program (For Public Hearing and Action at the April 13, 2011 Commission Meeting in Santa Barbara).

**SUMMARY OF LCP AMENDMENT REQUEST NO. 1-10**

Request by the City of Dana Point to amend the Implementation Plan (IP) portion of the Local Coastal Program (LCP) by amending the Dana Point Specific Plan and Dana Point Zoning Code.

The Implementation Plan amendment is proposed via City Council Resolution No. 06-09-12-06 and as reflected in the following Ordinance: 06-08, each of which is attached as Exhibits 1 and 2.

The issues raised by the Implementation Plan amendment are the same issues that were raised by the Land Use Plan amendment for the Dana Point Harbor since the subject Implementation Plan amendment was submitted along with the Land Use Plan amendment and has not been subsequently revised by the local government to reflect the Commission's October 8, 2009 action on the Land Use Plan amendment. However, subsequent to the Commission's action the City of Dana Point and OC Dana Point Harbor staff has worked extensively with Commission staff in developing the proposed suggested modifications that are necessary to carry out the certified LUP. The issues include the lack of standards/regulations to: 1) maximize the protection of the existing quantity of boat slips in the marina by failing to establish a goal of no net loss of slips, prioritizing the provision of smaller (less than 25 foot) slips in the redevelopment of the marina, and the provision of dry boat storage to offset the loss of in-water slips; 2) ensure that the new day-use commercial area (Commercial Core) is incidental to the priority coastal-dependent and coastal-related boating, boating support and water oriented recreational uses by regulating the intensity and phasing of the development, including the visual impacts on the character of the community and ensuring that there is adequate land area and parking for the maintenance and expansion of the higher priority uses; 3) protect the habitat within the Harbor that is used for wading bird (herons and egrets) nesting, roosting and breeding as well as habitat for owls, raptors or other bird species protected by the Migratory Bird Treaty Act, listed pursuant to the federal California Endangered Species Acts or California bird species of special concern;

4) preserve the existing lower cost overnight visitor accommodations (Marina Inn) and the prohibition of conversion of the facility to Limited Use Overnight Visitor Accommodations (LUOVA) on public tidelands; 5) ensure the assessment of the parking needs of the various uses within the Harbor and the provision of adequate parking facilities as well as the assessment of the need to provide for non-vehicular transit (seasonal water taxi, shuttle service and Tri-City Trolley) within and to the Dana Point Harbor; and 6) tie the expansion of existing private (membership) yacht clubs with the provision of public access improvements and lower cost boating opportunities and prohibition on the establishment of new private (membership) yacht clubs on tidelands.

### **SUMMARY OF COMMISSION ACTION**

**Major Amendment Request No.1-10 was heard by the Commission at its January 12, 2011 Hearing in Long Beach. At the hearing, the Commission required revisions to certain Suggested Modifications in order to bring the implementing provisions and regulations into conformance with and adequate to carry out the certified Dana Point Harbor Revitalization Plan (Land Use Plan) that was amended on October 8, 2009. The major revisions included but were not limited to: modifying the geographic location to be considered when determining whether proposed Dana Point Harbor development is consistent with community character (Chapter 3, Special Provision 8); allowed for 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 (Chapter 5, Section 5.5c.4) and other height restrictions, if 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 (Chapter 5, Section 5.5c.5); required that any trees containing nests of the identified protected bird species that had been 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 (Chapter 3, Special Provision 21); 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 (Chapter 4, Sections 4.2c, 4.2e, 4.5p and 4.5w); allowed for changes in Harbor anchorage space in order to accommodate new berthing or mooring space through the coastal development permit process (Chapter 11, Section 11.5j, Chapter 12, Section 12.j and Chapter 13, Section 13.j; 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 (Chapter 14, Section 14.6).**

**The revisions to the suggested modifications made by the Commission at the January 12, 2011 hearing are contained in Exhibit 1 of this staff report. The City of Dana Point and OC Dana Point Harbor have indicated agreement with the revisions to the suggested modifications. The full text of all the suggested modifications is contained in Exhibit 5, which is under separate cover.**

**COMMISSIONERS ON PREVAILING SIDE: Allgood, Blank, Bloom, Burke, Mirkarimi, Mitchell, Reiss, Sanchez, Stone, Zanzi, Chairman Wan**

**SUMMARY OF STAFF RECOMMENDATION:**

**Staff is recommending that the Commission adopt the following revised findings in support of the Commission's action on January 12, 2011, approving the proposed Dana Point Local Coastal Program Amendment 1-10 if modified. The motion to accomplish this is found on page 5.**

**STANDARD OF REVIEW**

The standard of review for the proposed amendment to the LCP Implementation Plan is conformance with and adequacy to carry out the provisions of the certified Dana Point Harbor segment of the City of Dana Point Land Use Plan.

**SUMMARY OF PUBLIC PARTICIPATION**

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

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

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

## **EXHIBITS TO THE REVISED FINDINGS**

1. **Suggested Modifications revised at the January 12, 2011 Commission Hearing.**
2. **Comments from Bruce Heyman, Boaters for .Dana Point Harbor**
3. **Comments from California Association of Harbor Masters and Port Captains, dated January 7, 2011**
4. **Comments from member of public regarding building height exception**
5. **Full Text of Suggested Modifications, as revised by the January 12, 2011 Commission action (This exhibit is provided in a separate bound document)**

Click on the link  
at left to go to the  
Full Text of  
Suggested  
Modifications.

## **EXHIBITS (FOUND IN THE ORIGINAL STAFF REPORT)**

1. City Council Resolution No. 06-09-13-06
2. Ordinance No. 06-08
3. Vicinity Map
4. Letter dated November 17, 2010 regarding Effective Certification of Dana Point Local Coastal Program Amendment 1-08
5. IP 1-10 Suggested Modifications *[This exhibit is provided in a separate bound document]*
6. Harbor Parking Resources
7. Dana Point Harbor Revitalization Plan Land Use Plan (LUP): Dana Point Harbor View Corridors Exhibit 8.1

## **ADDITIONAL INFORMATION**

Copies of the staff report are available on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov) and at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Fernie Sy in the Long Beach office at (562) 590-5071. The City of Dana Point contact for this LCPA is John Tilton who can be contacted at (949) 248-3500.

## **I. MOTION AND RESOLUTION**

**NOTE:** Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the following motion.

**MOTION:**

*"I move that the Commission adopt the following revised findings in support of the Commission's action on January 12, 2011 concerning the Dana Point LCP Implementation Plan amendment No. 1-10."*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members on the prevailing side present at the January 12, 2011 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**Commissioners eligible to vote on the Revised Findings for Major Amendment Request No. 1-10 are:** Allgood, Blank, Bloom, Burke, Mirkarimi, Mitchell, Reiss, Sanchez, Stone, Zanzi, Chairman Wan

**RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for its approving if modified as suggested, the City of Dana Point LCP (Implementation Plan) Major Amendment Request No. 1-10 on the ground that the findings support the Commission's decision made on January 12, 2011 and accurately reflect the reasons for it.

**II. SUGGESTED MODIFICATIONS**

Certification of City of Dana Point LCP Amendment Request No. 1-10 is subject to the modifications contained in Exhibit 5 (see separate attachment to the staff report). However, those suggested modifications that were revised by the January 12, 2011 Commission action are shown in Exhibit 1.

**III. FINDINGS**

**The following findings support the Commission's action of January 12, 2011 approving Dana Point Harbor Implementation Plan Amendment 1-10 if modified as suggested. Changes to the findings contained in the staff recommendation dated December 29, 2010 necessary to reflect the Commission's action are indicated as follows:**

Language added as a result of the Commission's January 12, 2011 action is shown in ***bold, italic, double underline***.

Language deleted as a result of the Commission's January 12, 2011 action is shown in ~~**bold, double strike out**~~.

The Commission hereby finds and declares as follows:

**A. Amendment Description**

The City of Dana Point has requested an amendment to the Implementation Plan (IP) portion of the certified Local Coastal Program (LCP). The existing certified Implementation Plan is found in the City's Zoning Code. The City's current amendment submittal is intended to establish the zoning for the area known as the Dana Point Harbor which is owned by the County of Orange and managed by Orange County (OC) Dana Point Harbor. It is also intended to provide implementation for the certified Land Use Plan, known as the Dana Point Harbor Revitalization Plan which was also amended and approved with suggested modifications by the Commission on October 8, 2009.

As proposed by the City, the proposed Implementation Plan amendment is intended to implement the recently approved (October 2009) Land Use Plan (LUP) amendment, replacing, in its entirety, the implementation sections relevant to the Dana Point Harbor found in the Dana Point Zoning Code in the commonly referred to "1996" Local Coastal Program.

The amended Dana Point Harbor Revitalization Plan (LUP) as approved by the Commission allows for a newly created Commercial Core area which would consolidate and intensify the existing visitor-serving commercial uses in the Harbor along a new promenade (Festival Plaza). The Plan also calls for the redevelopment of the existing aging East and West Marinas which currently contain 2,409 boat slips. Further, under the amended certified LUP the Harbor would allow for the future redevelopment and expansion of the boater service buildings, the three existing private (membership) yacht clubs/sailing associations as well as the future redevelopment and expansion of the existing Marina Inn, a lower cost hotel.

To carry out the recently amended certified LUP, the Implementation Plan is proposed to be amended by modifying the Zoning Map to establish zoning for the Harbor such that it is consistent with the Land Use Plan map approved under LUP LCPA 1-08 (see Exhibit 5, page 124). To implement the land use map reflected in the LUP the City proposes changes to the certified Zoning Map. The Zoning for the Harbor area remains "DPHPC" (Dana Point Harbor Planned Community) (Exhibit 1.1 of the Dana Point Harbor District Regulations found on page 5 of Exhibit 5); however, an additional Zoning Map (Exhibit 17.1 of the Dana Point Harbor District Regulations found on page 124 of Exhibit 5) has been included, which identifies the specific planning areas that are

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regulated by the Dana Point Harbor District Regulations. The zoning map changes are reflected in City Ordinance No. 06-08. The land use designations approved under the Dana Point Harbor Revitalization Plan Amendment LUPA 1-08 and reflected in the approved LUP map for the site include the following Planning Areas (PA) and acreages:

<u>Land Use Designation</u>	<u>Acreage</u>
PA 1 - Marine Service Commercial	24.0 acres
PA 2 - Day Use Commercial	18.1
PA 3 – Visitor Serving Commercial	9.5
PA 4 – Marine Commercial	21.2
PA 5 – Recreation	26.8
PA 6 – Educational/Institutional	3.4
PA 7 – Conservation	4.0
PA 8-12 – Education Basin, Marina Waterways, Marine Services Basin and Harbor Entrance	169.7

Accordingly, the Zoning for the Harbor area remains “DPHPC” (Exhibit 1.1 of the Dana Point Harbor District Regulations found on page 5 of Exhibit #5); however, an additional Zoning Map (Exhibit 17.1 of the Dana Point Harbor District Regulations found on page 124 of Exhibit #5) has been included, which identifies the specific planning areas that are regulated by the Dana Point Harbor District Regulations.

Dana Point Harbor Location

The proposed zoning map changes will affect the entire Dana Point Harbor LCP Area. The Dana Point Harbor is owned by the County of Orange and operated by Orange County (OC) Dana Point Harbor though located within the City of Dana Point. The City of Dana Point is situated in southwest Orange County, between the cities of Laguna Beach on the north and San Clemente on the south. Dana Point’s coastline is approximately seven miles long. Dana Point Harbor LCP A is 276.8 (gross) acres and is bounded by the Pacific Ocean on the south, Doheny State Beach on the east, Old Cove Marine Preserve on the west, and residential and public park, commercial and hotel development on the north, north of Dana Point Harbor Drive. The Harbor was created as a small boat harbor in 1968 from a natural cove. The Harbor opened in 1971.

**B. Description of Previously Approved Dana Point Harbor Land Use Plan Amendment 1-08**

The City of Dana Point Land Use Plan Amendment (LUPA) 1-08 was approved by the Commission on October 8, 2009. Among other things the Dana Point Harbor Revitalization Plan LUPA:

Establishes new land use designations and boundaries throughout the harbor.

Provides and protects uses that are preferred in the Coastal Act and allows only development, such as fishing, public access, water oriented recreation and incidental commercial uses, that is consistent with the Tidelands Grant. Additionally, institute controls on the expansion of existing and potential construction of additional private (membership) yacht clubs on tidelands.

Establishes the goal of harbor redevelopment to be no net loss of slips in Harbor-wide. Also, priority shall be given to the provision of slips that accommodate boats less than 25 feet in length in the redevelopment of the harbor.

Ensures that land area and parking facilities are maintained, enhanced and dedicated for coastal-dependent and coastal-related land uses.

Encourages the provision and use of public transit by having OC Dana Point Harbor in cooperation with the County and adjacent cities determine the feasibility of the Tri-City Trolley being operational prior to or concurrent with build-out and occupancy of the Commercial Core.

Establishes a tree trimming policy that will ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, and nesting habitat of bird species listed pursuant to the federal of California Endangered Species Acts, California bird species of special concern and wading birds (herons and egrets) as well as owls and raptors.

Institutes provisions for the protection of low cost visitor-serving facilities and overnight accommodations in the Harbor, which will assist in promoting overnight accommodations with a range of affordability. In addition, conversion of existing or construction of new LUOVAs on public tidelands in the Harbor are prohibited since LUOVAs do not maximize visitor serving uses since opportunities for public access and recreation would be far less than with a traditional hotel property, and certainly less than what is required for a designated commercial recreation site on public trust lands.

Protects scenic and visual resources by making sure development within designated and proposed scenic corridors is compatible with scenic enhancement and preservation. Protect and enhancement of public views to and

along the coast through open space designations and innovative design techniques. Establish height limits and exceptions to those height limits for buildings that are allowed only to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced. Additionally, require that building heights, excluding the dry stack storage building, are consistent with the existing community character of the area which consists primarily of 35 ft. high buildings (LUP Policy 8.5.1-3).

**C. Findings for Denial of Implementation Plan Amendment 1-10 as Submitted**

The standard of review for amendments to the Implementation Plan (IP) of a certified Local Coastal Program (LCP) is whether the Implementation Plan, as amended by the proposed amendment, will be in conformance with and adequate to carry out, the policies of the certified Land Use Plan (LUP).

**1. Tidelands and Submerged Lands**

The protection of Tidelands and Submerged Lands is an important issue for LCP areas that contain tidelands and submerged lands. Tidelands and submerged lands are subject to a public trust that, among other things, limits their use to navigation, fishing, public access, water-oriented recreation and open space and environmental protection, but also allows for incidental commercial use. Accordingly, in approving the Dana Point Harbor LUP amendment the Commission required new policies that call for, among other things, the protection and enhancement of recreational boating and water-oriented use and maximize public access in the Harbor. The Commission required the prohibition of additional private (membership) yacht clubs and required, among other things, that the three existing private membership boating clubs/associations provide mitigation for the expansion of those facilities, including maximizing public access to and along their bulkhead, allow public use of any banquet or meeting room facilities when not booked by members, and allow general public participation in any water safety or boating classes and use of equipment offered to members, and that the classes be offered free of charge or low cost to economically disadvantaged families (LUP Policy 3.2.1-4 below). The County was also required to provide similar mitigation when expanding its facilities (LUP Policy 3.2.1-5 below).

The certified Land Use Plan includes the following policies regarding tidelands and submerged land uses:

3.2.1-2 Promote the use of the Harbor for navigation, fishing, public access, water-oriented recreation and the provision of coastal-dependent uses adjacent to the water in leasing or re-leasing of publicly owned land. Commercial uses, incidental to the above uses, are also allowed.

3.2.1-3 Evaluate and ensure the consistency of the proposed use with the public trust

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restrictions and the public interest at the time any tideland lease is re-negotiated or renewed.

3.2.1-4 New boating/yacht clubs or associations that require membership and/or fees for enrollment/initiation and/or other recurrent fees (e.g. member dues, assessments, etc.), or any other facilities that operate similarly, on public tidelands, are prohibited. Any expansion of existing legally established boating/yacht clubs, associations and/or such clubs that renew or renegotiate their lease on public tidelands shall be required to: 1) remove any existing impediments to public access to and along the bulkhead/waterfront that exist due to the presence of the club; 2) where the club has facilities for banquets, receptions, meetings, luncheons, conferences, seminars and other similar events, make significant portions of the facilities available at all reasonable times to the public (member and non-member) groups, and market the availability of such facilities to the public; 3) within their existing capacity, provide activities at the facilities accessible to the general public throughout the year such as, but not limited to, sailing and navigation classes; sailing and boat racing events, and boating safety classes; 4) offer sailing, navigation, and boating safety classes and boat use and equipment for free and low cost to economically disadvantaged families (to the extent the club has access to such equipment); 5) prohibit membership requirements that discriminate against anyone on the basis of race, color, religion, sex, national origin, sexual orientation or disability.

3.2.1-5 The County shall offer a program to include, but not be limited to, sailing, navigation, and boating safety classes, and boat and equipment use, for free to youths (up to age 18) of economically disadvantaged families, with any proposal to expand or improve County operated facilities (e.g., OC Sailing & Events Center) that offer water oriented recreational opportunities to the public.

As submitted, the proposed Implementation Plan amendment does not contain standards/regulations to adequately carry out the above LUP policies for the protection of tidelands and submerged lands for maximum public access and priority water-oriented recreational uses. All of the existing private (membership) yacht clubs/associations are located in Marine Commercial Planning Area (PA 4) where “boating/yacht clubs or sailing associations” are permitted uses (Exhibit 5, Dana Point Harbor District Regulations, Chapter 7 Marine Commercial Planning Area Regulations, Section 7.2 Principal and Other Permitted Uses, subsection (c), page 53). The proposed District Regulations for the Marine Commercial Planning Area (PA 4) are not adequate to carry out the applicable certified LUP policy that prohibits additional private (membership) yacht clubs/associations.

Further, although the proposed Dana Point Harbor District Regulations IP amendment includes “commercial and recreational fishing” and “sport fishing/ charter boat” as permitted uses in many Planning Areas (PA) including the Marine Services Commercial (PA 1), the Marine Commercial (PA 4), Recreation (PA 5), Educational/Institutional (PA 6), Education Basin (PA 8), East and West Marina (PA 9 and 10) and the Marine Services Basin and Entrance Channel (PA 11 and 12) Areas, public access onto the Harbor jetties and other appropriate areas for the purpose of fishing and provisions for

public fishing, are not provided. Public fishing is a lower cost water-oriented recreational use and must be maintained and provided in new areas, where it can be done safely, as required by the certified LUP.

The proposed IP amendment does not adequately carry out the applicable LUP policies regarding tidelands and submerged lands as required by the certified LUP and therefore must be denied as submitted.

## **2. Coastal-Dependent/Related Development**

In approving the Dana Point Harbor LUP amendment the Commission placed a priority on the use of land and water area for coastal-dependent and coastal-related uses, such as maintaining and enhancing recreational boating including the existing marina and the public boat launch ramp facility and boating support facilities, including dry boat storage, boater service facilities and shipyard facilities and the provision of guest and dinghy docks. Secondly, emphasis was placed on the provision of lower cost water-oriented, recreational uses and facilities, such as the provision of additional hand launch watercraft use and storage areas at Baby Beach and other areas, and vendor space for those renting kayaks, paddleboards or other similar small vessels. Finally, visitor-serving commercial uses were allowed to the extent that the intensity and location of these uses do not adversely impact the coastal-dependent/coastal-related uses general public ability to enjoy the coast.

Specifically, the certified Dana Point Harbor LUP contains the following policies dealing with the provision, enhancement and protection of coastal-dependent and coastal-related development:

### **4.1 Dana Point Harbor Coastal-Dependent / Related Development**

#### **4.1.1 Coastal-Dependent / Related Development – Policies**

4.1.1-5 Maintain and enhance boating use through the provision of various amenities to the waterside areas, including, but not limited to improved boater drop-off areas, dedicated boater parking, upgraded boater service buildings and restrooms and dinghy docks planned to be relocated adjacent to Planning Area 2.

4.1.1-7 Increased recreational boating use of Dana Point Harbor shall be encouraged by maintaining and enhancing dry storage areas, maintaining and increasing public launching facilities, maintaining and enhancing berthing space within the Harbor and limiting non-water-dependent land uses that may congest access corridors and preclude boating support facilities. (Coastal Act Section 30224).

## **4.2 Vessel Launching, Berthing and Storage**

### **4.2.1 Vessel Launching – Policies**

4.2.1-1 Protect and where feasible, expand and enhance vessel-launching facilities in Dana Point Harbor. Provide low-cost use of such facilities.

4.2.1-2 Protect, and where feasible, expand and enhance low-cost public boating facilities, such as providing a dedicated hand launch area at Baby Beach during peak usage periods; make publicly accessible areas of the docks available for hand launching; and providing adequate locations for vendors renting kayaks, paddleboards or other similar small vessels. Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.

### **4.2.2 Berthing and Storage – Policies**

4.2.2-1 Provide a variety of berthing opportunities reflecting State and regional demand for slip size throughout Dana Point Harbor.

4.2.2-2 Protect, and where feasible, enhance and expand berthing, dry boat storage facilities and hand launch vessel storage opportunities.

4.2.2-3 Maintain existing quantity of anchorage space, and where feasible, provide new anchorages in areas of the Harbor that minimize interference with navigation and where shore access and support facilities are available.

4.2.2-5 Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest slips, club guest slips, pump-out stations and other facilities. A minimum of 42 guest slips shall be maintained in the Harbor.

4.2.2-6 Protect and enhance berthing opportunities in Dana Point Harbor. The goal for any dock replacement should be no net loss of slips harbor-wide. However, if conformance with current engineering and Americans with Disabilities Act (ADA) design requirements, and/or the provision of larger slips to meet demands, requires a reduction in the quantity of slips in existing berthing areas, those slips should be replaced, if feasible, in new berthing areas elsewhere in the harbor (e.g. within a portion of the 'safe harbor' area near the east breakwater). Priority shall be given to provision of slips that accommodate boats less than 25 feet in length. The average slip length shall not exceed 32 feet. If new berthing areas are not available or are limited in size, the net loss of slips harbor-wide shall be minimized and shall not exceed 155 slips.

4.2.2-9 Encourage and maintain marine-related businesses and industries unless the demand for such facilities no longer exists. A shipyard shall be maintained in Planning Area 1 and shall be no less than 1.6 acres in size.

4.2.2-10 Ensure that the redevelopment of Dana Point Harbor maintains and enhances the following coastal-dependent and coastal related uses:

- Redesign and expand the existing 5.7 acre boat launch facility to maximize the number of vehicle with trailer parking spaces meeting minimum Department of Boating and Waterway guidelines (10 x 40 feet). Some larger and smaller vehicle with trailer parking spaces shall also be provided in adequate amount to meet demand as determined through the coastal development permit process;
- Maintain space for at least 493 boats to be stored on dry land in Planning Area 1; 400 of these spaces may be provided in a dry stack storage facility. Maintain a minimum of 93 surface boat storage spaces, that can accommodate vessels that can not be stored in a dry stack storage building, within the Harbor at all times; additional spaces shall be provided where feasible;
- Removal of any existing slips prior to construction and full operation of the boat storage facility shall only occur pursuant to an approved CDP for marina redevelopment that addresses impacts associated with any loss of slips; and
- Maintain designated boater parking at a minimum ratio of 0.60 parking spaces per boat slip or side tie.

### **4.3 Harbor Support Facilities**

#### **4.3.1 Harbor Support Facility – Policies**

4.3.1-4 Protect and where feasible, expand and enhance existing harbor support uses serving the needs of existing waterfront uses, recreational boaters, the boating community and visiting vessels.

### **4.4 Marine Commercial (MC) and Marine Services Commercial (MSC)**

#### **4.4.1 Marine Commercial (MC) and Marine Services Commercial (MSC) – Policies**

4.4.1-3 To provide enhancements to boater facilities and services in the Marine Services Commercial area (Planning Area 1) one (1) dry stack boat storage facility building may be constructed with a capacity to store up to 400 boats generally ranging in size from 20 to 40 feet. The existing functionality and mode of use of surface boat storage by boaters should be provided within any dry stack boat storage facility to the maximum extent possible. Other services may include ancillary marine-related administrative, professional and business offices, marine retail store, a boater lounge area, a hoist, boat maintenance area, and potentially other boat maintenance and support facilities. The existing public launch ramp and associated vehicle and trailer parking facilities shall be enhanced and maintained. There shall be no net loss of the existing 334 vehicle with trailer parking spaces. The existing vehicle with trailer parking spaces shall be reconfigured such that spaces are maximized and meet the minimum California Department of Boating and Waterways guidelines of 10 x 40 feet to the greatest extent feasible while taking into consideration the demand for larger and smaller spaces. An adequate amount of larger and smaller vehicle with trailer parking spaces shall also be provided for the type of tow vehicles and vessels that use the launch ramp facility, as determined through the Coastal Development Permit process.

As submitted, the proposed Implementation Plan amendment does not contain standards/regulations to adequately carry out the above LUP policies for the provision, maintenance and enhancement of coastal-dependent and coastal-related uses. The Marine Services Commercial (MSC) Planning Area (PA 1) contains the existing shipyard, surface dry boat storage, and a portion of the existing public boat launch ramp facility.

The above LUP policies required that any redevelopment of the existing marina (PA 9 and 10) have as a priority the provision of slips that accommodate boats less than 25 ft. in length and a goal no net loss of the existing 2,409 slips; but if slips are lost due to ADA, engineering requirements or the demand for larger slips and the slips cannot be replaced in new Harbor berthing areas, that the maximum loss be kept to 155 slips, and that the average slip length of the new marina not exceed 32 ft. (LUP Policy 4.2.2-6). The certified LUP also requires that no in-water slips can be removed prior to approval of a Coastal Development Permit that deals with the provision of adequate dry boat storage facilities (LUP Policy 4.2.2-10). Also required was that the sizeable stand alone marine retail use and its associated parking be eliminated in PA 1 so that the area can be used to expand and enhance the existing public boat launch ramp facility to provide a minimum of 334 adequately sized vehicle with trailer parking spaces and surface dry boat storage space (LUP Policies 4.2.2-2, 4.2.2-10, 4.3.1-4 and 4.4.1-3); and that land area no smaller than 1.6 acres be retained in PA 1 for a full-service shipyard facility (LUP Policy 4.2.2-9). The proposed Implementation Plan amendment does not contain standards/regulations to require these coastal-dependent and coastal-related uses be provided. Therefore the IP amendment must be denied as submitted.

### **3. Visitor-Serving Commercial Development**

Visitor-Serving Commercial Development including day-use commercial is strongly preferred under the Coastal Act. This type of use is preferred because it provides opportunities for the general public to enjoy the unique experience available only along the coast. The Dana Point Harbor is a favorable location to provide amenities that will enhance the general public's access to the coast. However, when the LCP area in question is a harbor area, coastal-dependent boating, fishing and water-oriented recreational uses and coastal-related uses such as boating support uses have priority over visitor-serving commercial use. The certified LUP allows the redevelopment and intensification of the visitor serving day use commercial area, called the Commercial Core. However, due to the requirement that day use commercial uses are incidental to the priority coastal dependent boating and boating support uses and water-oriented recreational uses, the LUP contains policies that require that the necessary land area and parking support for these priority uses be preserved before allowing the day use commercial uses to intensify. However, as submitted the proposed IP amendment does not include the required phasing of the higher priority uses and assure parking support for those uses and therefore does not conform to or adequately carry out the certified LUP. Therefore the IP amendment submittal must be denied as submitted.

#### **4. Lower-Cost Overnight Accommodations/Limited Use Overnight Visitor Accommodations**

The certified LUP amendment has policies that protect the existing 136 room lower-cost hotel, known as the Marina Inn. The hotel is located on filled public tidelands within the Harbor. The LCP contemplates expansion of that hotel from 136 to 220 rooms, plus the addition of other amenities including conference facilities. As land becomes less available and more expensive, protection of coastally located facilities that provide recreation and accommodations to the general public become invaluable. It is important to protect those uses that best service the public in general, as opposed to members of the public that can afford certain luxuries.

LUP policies protect the existing lower cost overnight accommodations and assure that renovated or new accommodations are also low cost. Historically, the Commission has in past actions, loosely considered low cost to be less than \$100 per night. In order to protect the existing lower cost facility the City and OC Dana Point Harbor agreed in the LUP to stipulate that the existing hotel, which has room rates of about \$89.00/night, is low cost, and that any renovated, replaced or new additional units would also be low cost. The LUP requires that conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost, and construction of any new/additional units that are anything other than lower cost units shall require a local coastal program amendment to address Coastal Act issues associated with such proposals. The certified LUP policies that protect the existing overnight accommodations include:

### **5.2 Overnight Visitor Accommodations and Recreational Facilities (R)**

#### **5.2.1 Overnight Visitor Accommodations and Recreational Facilities (R) – Policies**

5.2.1-1 Harbor visitor serving and overnight accommodations (Planning Area 3) will be enhanced by potential replacement and/or remodeling of the hotel complex to include conference and recreational facilities in addition to providing up to 220 new guest rooms and amenities.

5.2.1-2 If demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with units that are of equal or lower-cost than the existing lower-cost units to be demolished. Conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost, and construction of any new/additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals.

5.2.1-3 The conversion of any existing overnight accommodations located on public tidelands to timeshares or condominium-hotel units or any other type of Limited Use Overnight Visitor Accommodations, shall be prohibited. The construction of new

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timeshares or condominium-hotel units, or any other type of Limited Use Overnight Visitor Accommodation, on public tidelands, shall be prohibited. Limited Use Overnight Visitor Accommodations are any hotel, motel or other similar facility that provides overnight visitor accommodations wherein some or all of the units, rooms, lots or parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right in perpetuity, for life or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s) or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to timeshare, condominium-hotel, fractional ownership hotel or uses of a similar nature.

5.2.1-4 Harbor visitor serving and overnight accommodations (Planning Area 3) will be enhanced by potential remodeling and/or replacement (if remodeling isn't feasible) of the hotel complex to potentially include conference and recreational facilities in addition to providing up to 220 new guest rooms and amenities.

5.2.1-10 A parking deck with access directly from Dana Point Harbor Drive, Casitas Place or the Commercial Core area may be considered as part of the overall hotel design to separate the main guest entrances from service and delivery functions.

5.2.1-11 Future facilities providing overnight accommodations will be located in the area designated as Visitor Serving Commercial (Planning Area 3) by the Dana Point Harbor Land Use Plan.

The IP amendment as submitted provides no regulations or provisions to carry out the protection of the existing lower cost overnight accommodations required by LUP Policy 5.2.1-2 above which requires the replacement of any demolished units be replaced in the existing Planning Area 3 (Visitor-Serving Commercial) with units of equal or lower-cost than the existing lower-cost units. Further there are no proposed regulations to require that the conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost, and construction of any new/additional units that are anything other than lower cost units require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals. Therefore the proposed IP amendment is not adequate to carry out the certified LUP for the protection of existing lower cost overnight accommodations and must be denied as submitted.

The Commission found in its action certifying the Dana Point Harbor LUP that there is a recent trend that developers constructing projects with overnight accommodations often seek individual investors to aid in the initial costs of construction and development. This often results in a development having a "private component" that limits the visitor-serving use of the facility. These developments incorporate condominium hotel units or fractional ownership units (i.e. Limited Use Overnight Visitor Accommodations or LUOVAs), both of which give some priority to the individual owners, and diminish the visitor-serving use of such a facility. In order to protect the existing lower cost overnight accommodation from becoming available to a more limited segment of the general

public who can afford to participate in the various types of LUOVA programs and prevent the existing units from becoming more like residential than overnight visitor accommodations, the Commission first required a policy in the LUP to add a definition for the term “Limited Use Overnight Visitor Accommodations” or LUOVA and added a policy to clarify that no existing, traditional overnight transient visitor serving accommodations can be converted to Limited Use Overnight Visitor Accommodations and no new LUOVAs may be constructed on public tidelands. The proposed IP amendment contains no regulations or provisions restricting the conversion of the existing lower cost overnight accommodation to LUOVA as required by LUP Policy 5.2.1-3 above. Therefore the amendment submittal must be denied as submitted.

### **5. Transit/Smart Growth**

The certified LUP requires policies to encourage provision and use of public transit as one method to allow visitors to move throughout the Harbor and to other destination points of the City without relying on the private automobile thereby improving circulation and reducing traffic congestion and enhancing public access to the coast. The local government already provides a shuttle for use by the public during peak use periods associated with temporary events such as the annual Blues Festival but noted that there is currently no demand for an ongoing shuttle system.

However, the certified LUP requires various transit/smart growth policies including Policy 6.2.1-2 that requires the City and OC Dana Point Harbor in cooperation with the County and adjacent cities to determine the feasibility of the Tri-City Trolley becoming operational prior to or concurrent with build-out and occupancy of the Commercial Core; requiring funding mechanisms and the option to serve Dana Point Town Centre to be evaluated; and reducing traffic congestion and parking demand within OC Dana Point Harbor and enhancing connectivity between areas of high public use within the Dana Point coastal zone (e.g. Harbor, Town Center, Doheny State Beach, hotels, etc.), by implementing a shuttle service to link the Harbor with other areas of high public use when anticipated ridership suggests demand for such service. The City and OC Dana Point Harbor shall continually evaluate traffic and parking demand within the harbor to determine whether implementation and/or expansion of existing shuttle service is required. Further, where shuttle service implementation and/or expansion is determined to be necessary to offset the impacts of new development, the certified LUP requires the City and/or OC Dana Point Harbor to require that new development participate in the provision of a shuttle service. There is also an LUP policy (Policy 6.2.3-11) stating that a seasonal water taxi will be incorporated throughout the harbor if there is demand for such service.

The LUP also contains other transportation specific policies as shown below, including the provision of pedestrian/bicycle trails, aimed at minimizing pedestrian conflicts and thereby improving public access to the Commercial Core area and the water and reducing the demand for parking. Finally, policies regarding parking are also provided

in the certified LUP that would enhance the vehicular circulation system and are also found in the Public Access and Recreation Policies of the certified LUP.

### **6.2.1 Transportation – Policies**

6.2.1-1 Promote Harbor improvements that are designed in a manner that: (1) facilitates provision or extension of transit service; (2) provides on-site commercial and recreational facilities to discourage mid-day travel; and (3) provides nonautomobile circulation to and within the Harbor. (Coastal Act Section 30213 & 30252)

6.2.1-2 The City of Dana Point and OC Dana Point Harbor shall cooperate to the maximum extent feasible to provide a convenient shuttle service to link Dana Point Harbor with the Town Center and reduce energy consumption and vehicle miles traveled wherever feasible. (Coastal Act 30252, 30253)

6.2.1-3 The implementation of restrictions on public parking along Dana Point Harbor Drive and Street of the Golden Lantern that would impede or restrict public access to the Harbor, trails or recreation areas (including, but not limited to the posting of “no parking” signs, red curbing and placement of physical barriers) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Changes to existing time limits or hours of operation and substantial changes to parking fees shall require a Coastal Development Permit.

6.2.1-4 Prior to Coastal Development Permit approval for development within the Commercial Core, plans shall be prepared indicating the use of Transportation Demand Management Plan (TMP) measures such as preferential parking for vanpooling/carpooling, employee subsidy for transit passes or vanpooling/carpooling, flextime work schedules, etc. A TMP shall be required for implementation as part of the Coastal Development Permit process.

6.2.1-5 Bike racks shall be incorporated into the design of the Harbor wherever feasible.

### **6.2.2 Public Transit**

#### **Public Transit – Policies**

6.2.3-1 Transit service and pedestrian/bicycle trails shall be maintained and enhanced wherever possible in order to reduce the demand for parking.

6.2.3-2 Require the implementation of employer Transportation Demand Management (TDM) requirements included in the Southern California Air Quality Management District’s Regulation XV of the Air Quality Management Plan. Participate in regional efforts to implement (TDM) requirements.

6.2.3-3 Promote ridesharing and public transportation through publicity and provision of information to the public.

6.2.3-4 Ensure accessibility of public transportation for elderly and disabled persons.

6.2.3-5 Require employers to reduce vehicular trips by offering employee incentives.

6.2.3-6 Provide for a non-vehicular circulation system that encourages mass-transit, bicycle transportation, pedestrian circulation. (Coastal Act Section 30252, 30253)

## **Water Transportation**

### **Water Transportation – Policy**

6.2.3-11 A seasonal water taxi service may be incorporated throughout the Harbor to reduce average daily trips (ADT's) during peak Harbor usage days.

The proposed IP amendment submittal does contain provisions for a seasonal water taxi by making water taxi service and stops an allowable use in the applicable Planning Areas and providing shuttle service during peak use periods associated with temporary events. However, as submitted the proposed IP amendment is inadequate to carry out the above LUP policies aimed at maintaining and enhancing public access to and throughout the LCP area with the provision of transit/smart growth practices that reduce the reliance on the private automobile since there is no commitment to the evaluation of a shuttle on a permanent basis. Therefore the proposed IP amendment must be denied as submitted.

## **6. Public Access and Recreation**

In certifying the Dana Point Harbor LUP the Commission found that the public access and recreation provisions were lacking. The Commission required policies to be added to the certified LUP to preserve, maintain, and enhance existing public accessways to the Harbor and the provision and protection of existing public open space/park areas in Planning Areas 1 and 4, and also to enhance access to the Harbor by creating new public access opportunities. Roadway circulation improvement policies were added to improve access to the Harbor. The certified LUP requires policies to ensure the continued provision and expansion of shoreline access in the harbor including continuous public access along the waterfront and bulkhead in the harbor; and a comprehensive sign plan to assure the public is well-informed about available access opportunities.

LUP policies describing and graphics depicting existing access to be protected and the enhancement of public access with new access opportunities were required. The LUP 'Circulation and Access' section was found to be inadequate because of its emphasis on the Commercial Core area but did not protect public access to the other recreational areas of the Harbor including the parks in Planning Areas 1 and 4, Baby Beach in Planning Area 5, and opportunities for increased use of lower cost hand launch vessels and other smaller watercraft and fishing.

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Although the LUP provided general parking policies for the Harbor, specific parking standards were not provided and the certified LUP. The specific parking ratios were to be provided in the Implementation Plan.

Policies were added to provide additional recreational opportunities, including low cost recreational opportunities within the harbor, such as the expansion of places to hand launch small non-motorized watercraft and provide necessary parking; as well as opportunities to rent and store such watercraft as close to hand launch area as feasible.

Although the certified LUP allowed a reduction in the required parking ratio for boater parking, reducing the parking allocation required for boat slips from 0.75 to 1.6 spaces per boat slip to 0.6 spaces per slip, the LUP requires that the Commercial Core and other lower priority commercial uses throughout the Harbor not adversely impact the parking supply and land area available for the higher priority coastal-dependent and water-oriented recreational uses. The certified LUP also addressed the intensity and phasing of the new Commercial Core development in order to ensure that the development, and its required parking, does not adversely impact parking that is available for other higher priority coastal dependent uses (e.g. the marina boater parking and the public boat launch ramp facility) or that is used for other public access purposes (e.g. picnicking, Baby Beach or strolling along the bulkhead).

The existing supply of 3,962 parking spaces within the Harbor is augmented by approximately 62 additional on-street spaces along Dana Point Harbor Drive and 65 on-street spaces on Street of the Golden Lantern, according to the City/County figures). These existing parking spaces are distributed around the harbor in surface parking lots that support the adjacent uses ((Exhibit 6). The area of greatest competition for parking is in the north-east quadrant of the harbor (identified as 'parking area I' in Exhibit 6), where significant existing and proposed commercial development (e.g. restaurants, bars, retail) is located, the Catalina Express and sport fishing docks, the boat launch ramp, boat storage areas, and boat slips. This is the area closest to major roads with access into the harbor like Street of the Golden Lantern and Pacific Coast Highway which feed onto Dana Point Harbor Drive and is where the 'Commercial Core' is contemplated.

The certified LUP recognizes that there are limited opportunities to provide additional parking in the Harbor without constructing multi-level parking structures. However, the use of such structures is constrained by the need to avoid adverse impacts to public coastal views to the harbor and to minimizing displacement of other higher priority uses, such as the public launch ramp facility and boater parking. There are inherent limitations on the types of vehicles that can use such structures (e.g. at-grade lots can be used for multiple purposes (e.g. cars, small and large vehicles with and without trailers for boats, as well as for boat storage), whereas structures can mostly only be used by passenger vehicles. The Commission was concerned about the potential displacement of higher priority uses by the new Commercial Core development and/or its associated parking demand and required policies in the LUP to deal with this

concern. The policies first make it clear that the square footage of retail, restaurant and other commercial and private (membership) yacht and boating club development identified in the certified LUP in the Commercial Core and other areas of the Harbor is the maximum possible and in no way guaranteed. Second, the Commission required in the LUP that provisions that allow the planned intensity of the Commercial Core, including the granting of height exceptions, be allowed only if the visual resources of the area are preserved and enhanced, as discussed in the Visual Resources section of this staff report. Third, the Commission required that before the Commercial Core is allowed to build out that the parking needs and land area for the higher priority coastal-dependent, coastal-related support uses and water-oriented recreational uses must be provided through development phasing requirements.

Additionally, the LUP contains policies requiring that a comprehensive parking management plan be prepared to make better use of existing and planned parking resources for new commercial development as well as maintaining designated boater parking at the new parking ratio and assuring continued public access parking in the Harbor. The certified LUP requires maximum distances for the provision of any relocated boater parking and if existing designated boater parking is relocated assistance is required to boaters to, among other things, transport equipment between the parking facility and their boat docks. Finally, the certified LUP requires that adequate parking or alternative public transportation be provided.

The specific LUP Policies that were required to address public access and recreation issues are as follows:

## **6.1 Shoreline Access**

### **6.1.1 Shoreline Access – Policies**

6.1.1-2 Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. (Coastal Act Sections 30213, 30222, 30223)

6.1.1-4 Existing, new or improved public access shall be well posted. A comprehensive signage plan shall be implemented in conjunction with new development to inform the public of the availability of and provide direction to coastal accessways, on-site recreational amenities, and public parking areas. The County shall coordinate an access signing system to facilitate regional access from Interstate 5 and Pacific Coast Highway.

6.1.1-10 Public access and views of the waterfront shall be enhanced through the creation of a large, centralized outdoor Festival Plaza (approximately 35,000 sq. ft.), and located at the southern terminus of the Street of the Golden Lantern that provides a combination of landscaping, special paving and informal seating opportunities, serving as a central gathering place for events, activities and celebrations.

6.1.1-11 Wherever appropriate and feasible, public facilities including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

### **Bikeways and Trails – Policies**

6.2.4-2 Promote the safety of pedestrians and bicyclists by adhering to national standards and uniform practices.

6.2.4-3 Maintain existing pedestrian facilities and require new development to provide pedestrian walkways between facilities.

6.2.4-4 Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act Sections 30210-212.5, 30250, 30252)

6.2.4-5 Develop stronger pedestrian, bicycle and visual linkages between public spaces and along the shoreline and bluffs. (Coastal Act Sections 30210, 30212)

6.2.4-7 Require the provision of showers, changing rooms and an accessible and secure area for bicycle storage at all new and existing developments and public places whenever feasible. (Coastal Act Section 30213)

6.2.4-9 Provide public access consistent with the exhibit entitled Dana Point Harbor Coastal Access.

6.2.4-10 Maximize public access to and along the waterfront and bulkhead. As a goal, maintain, and where necessary establish, continuous, uninterrupted public access along the waterfront and bulkhead, except along those segments of the bulkhead in the Marine Service Commercial area where provision of such access would interfere with boat launch and repair operations (in which case connecting detours shall be provided around those areas). Remove existing obstructions to public access along the waterfront and bulkhead and establish new public accessways through those areas.

6.2.4-11 Pedestrian walkways and trails shall provide connection points to off-site, existing or proposed walkways/trails, including integration with the California Coastal Trail.

6.2.4-12 Provide public access onto harbor jetties, including provisions for public fishing, wherever feasible and to the extent such access can be safely provided.

### **6.2.5 Parking**

### **Dana Point Harbor Parking – Policies**

6.2.5-1 All parking facilities shall be designed to include safe and secure parking for bicycles.

6.2.5-2 Provide opportunities for and encourage the shared use of parking facilities to improve public access to the coast, where feasible and where such shared use does not substantially and adversely impact the primary use for which the parking was intended. (Coastal Act Sections 30212.5 & 30252)

6.2.5-3 Adequate parking will be provided in close proximity to the use the parking is intended to support.

6.2.5-5 Provide sufficient off-street parking. (Coastal Act Section 30250)

6.2.5-6 Designated boater parking areas shall be located as close as possible to the land/dock connection point of the docks they serve. Typically, the boater parking spaces should be within 300-feet of the land/dock connection point of the docks they serve, but where adherence to this standard is infeasible, the parking spaces shall be within a maximum of 600-feet of the land/dock connection point of the docks they serve. Mitigation measures should be provided to assist boaters with transport of passengers, equipment and provisions from parked vehicles to the land/dock connection point of the docks they serve in cases where the distance between parking spaces and the docks exceeds 300-feet and/or where there are other factors present which make such transport difficult.

6.2.5-7 As part of any application for a Coastal Development Permit for Revitalization Plan improvements in the Commercial Core, a parking management program shall be developed which assesses current and anticipated future parking demands throughout the harbor, taking into account weekday, weekend and seasonal variations in the use of Harbor facilities, and develops a plan which makes the best possible use of the parking while prioritizing and avoiding adverse impacts on dedicated boater parking and boat launch ramp parking (i.e. vehicle with boat trailer) opportunities. The parking needs of the general public visiting the harbor for boat and non-boat related recreational purposes shall also be considered, especially with regard to any underutilized parking that may exist in Planning Area 4.

6.2.5-8 The parking ratios will be contained in the off-street parking standards section of the Implementation Plan once certified by the California Coastal Commission. Any changes to these standards shall require a Local Coastal Program Amendment.

6.2.5-9 Separate pedestrian sidewalks will be provided as part of the ramp design to minimize pedestrians using parking aisles to access the Commercial Core area businesses.

6.2.5-10 Prioritize construction of proposed parking facilities in new development to augment parking for Harbor visitors and boaters.

6.2.5-11 Designated boater drop-off areas and parking shall be provided in the Commercial Core.

6.2.5-12 Existing surface parking may be re-striped to improve efficiencies in parking stall configuration.

6.2.5-13 Prior to the approval of any Coastal Development Permit or Grading Permit for Revitalization Plan improvements, OC Dana Point Harbor shall prepare a construction-phase Parking Management Plan (PMP) that ensures public access will be retained to the extent it can be safely provided and to reduce construction congestion/conflicts.

6.2.5-14 OC Dana Point Harbor shall prepare a Traffic Management Plan (TMP) to include a provision for use of off-site locations for parking during peak Harbor use periods as necessary.

6.2.5-15 Existing parking in Planning Area 4 that supports access to recreational amenities (e.g. walkways, picnic areas, green space) shall not be reduced. Those parking spaces shall not be used to support other uses in Planning Area 4 (e.g. expanded yacht clubs, restaurant, harbor patrol, etc.). Consideration shall be given to opening up existing underutilized parking areas that are closed to public use for use by the visiting public.

## **6.3 Recreation (R)**

### **Recreational – Policies**

6.3.1-1 Encourage the provision of a range of recreational facilities and programs to meet the needs of Harbor visitors.

6.3.1-2 Lower cost visitor and recreational facilities shall be protected, encouraged and where feasible, provided. Harbor facilities providing public recreational opportunities are preferred. (Coastal Act Section 30213)

6.3.1-3 Pedestrian linkages shall be created between Harbor amenities, such as the Pedestrian Promenade and linear park.

6.3.1-4 Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through among other methods, creative site planning and minimizing visual impacts and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act Section 30240)

6.3.1-5 Coastal water areas suited for water-oriented recreation activities shall be protected for such uses. (Coastal Act Section 30220)

6.3.1-6 Maintain, enhance, and where feasible, expand places to hand launch small non-motorized watercraft and provide necessary parking; as well as opportunities to rent and store such watercraft. Storage for hand launch vessels shall be provided as close to hand launch areas as feasible.

### **6.3.3 Temporary Events**

#### **Temporary Event – Policies**

6.3.3-1 Temporary events shall minimize impacts to public access, recreation and coastal resources. A Coastal Development Permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day; 2) occupy any portion of a public sandy beach; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A Coastal Development Permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources. (Coastal Act/30212)

6.3.3-2 Special event permits and Coastal Development Permits (as required above) for temporary events shall be required to provide details on event characteristics, including duration (from set up/assembly to break-down/dismantling and clean-up times), event hours, per day estimated attendance, parking management and shuttle arrangements, traffic control, noise control, waste removal, insurance, equipment to be used, food service, entertainment, sponsorships and advertising/marketing plans.

6.3.3-3 A Special Event Permit shall be required for all events that necessitate the temporary closure of a public roadway and shall be reviewed and approved by the Orange County Sheriff's Department prior to permit issuance.

6.3.3-4 Shuttle service from off-site parking areas and available to the public free of charge shall be required to serve any temporary event requiring a Coastal Development Permit.

The proposed IP amendment is inadequate to carry out the public access and recreation LUP policies of the certified LUP as cited in the above. Therefore the IP amendment must be denied as submitted.

## **7. Coastal Resource Protection**

Protection of Coastal Resources is a primary goal in the certified LUP. The LUP indicates that is coastal sage scrub habitat on the coastal bluff face at the northern boundary of the LCP area in Planning Area 7. There are also protected bird species such as the black-crowned night heron, snowy egret as well as raptors present in the Harbor. Herons and egrets nest, roost and breed in non-native trees located in an existing park area in at the southern end of Planning Area 1. The LUP required that this area be given a land use designation of Recreation (R) as opposed to the Marine Service Commercial (MSC) designation of the surrounding area (see Exhibit 5, page 124). The certified LUP contains policies to ensure the long-term protection of breeding, nesting and roosting habitat for bird species listed pursuant to the Federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) as well as owls and raptors. The certified LUP policies that protect these coastal resources are as follows:

## **7.0 Coastal Resource Protection**

### **7.1 Biological Resources**

#### **7.1.1 Dana Point Harbor Biological Resource – Policies**

7.1.1-1 The Dana Point Harbor Revitalization Plan has a wide range of biological resources which may include Environmentally Sensitive Habitat Areas (ESHAs) including important plant communities, wildlife habitats, marine refuge areas and significant tree stands, all of which shall be appropriately preserved and protected depending upon their designation. Development in areas adjacent to Environmentally Sensitive Habitat Areas shall be sited and designed to prevent impacts which would significantly degrade those areas through such methods as, the practice of creative site planning and vegetative buffers and shall be compatible with the continuance of those habitat areas. A definitive determination of the existence of Environmentally Sensitive Habitat Areas on a specific site shall be made through the Coastal Development Permit process. (Coastal Act Sections 30230, 30240)

#### **7.1.2 Land Resources**

##### **Nesting and Foraging Habitat**

##### **Nesting and Foraging Habitat – Policies**

7.1.2-2 While evaluations of the trees located throughout Dana Point Harbor do not rise to the level of ESHA, they do provide important habitat which should be protected. The purpose of these tree trimming policies is to ensure the long-term protection of bird breeding, nesting and roosting habitat for bird species listed pursuant to the Federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) as well as owls and raptors which have an especially valuable role in the overall coastal ecosystem. Ensure the protection of bird nesting habitat protected by the Migratory Bird Treaty Act and the long-term protection of breeding, roosting, and nesting habitat of bird species listed pursuant to the federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) as well as owls or raptors. The trimming and/or removal of any trees that have been used for breeding and nesting by the above identified species within the past five (5) years, as determined by a qualified biologist or ornithologist shall be undertaken in compliance with all applicable codes and regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act, and shall be conducted under the parameters described in the Dana Point Harbor Tree Maintenance Procedures as approved by the Coastal Commission as a part of the Implementation Plan.

7.1.2-3 OC Dana Point Harbor shall prepare Tree Maintenance Procedures for the trimming and/or removal of trees consistent with Policy 7.1.2-2 above. The procedures shall include, but not be limited to, the following provisions:

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- Tree trimming, or tree removal when necessary, shall be conducted only during the non-breeding and non-nesting season (October through December) of the identified bird species unless the County of Orange in consultation with a qualified arborist and with review and comment from the Audubon Society determines that a tree causes danger to public health and safety. A health and safety danger shall be considered to exist if qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The County shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season.
- Trees or branches with a nest of a state or federal listed species, a California bird species of special concern, or a wading bird (heron or egret) as well as owls or raptors that has been active anytime within the last five years shall not be removed or disturbed unless a health and safety danger exists.
- The removal of any tree shall require mitigation at a 1:1 ratio. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree location, tree type, tree size (no less than 36 inch box size), planting specifications, and a five-year monitoring program with specific performance standards.

7.1.2-4 If an active nest of any bird species listed pursuant to the federal or California Endangered Species Act, California bird species of special concern, or a wading bird (herons or egrets) as well as owls or raptors is found, construction activities within 300 feet (500 feet from any identified raptor nest) shall not exceed noise levels of 65 dB peak until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. Surveys for the above bird species during their breeding season shall be conducted by a qualified biologist prior to commencement of construction.

The proposed IP amendment fails to include the required regulations and special provisions as required by the above LUP Policies 7.1.2-1 through 7.1.2-3 to carry out the long-term protection, including the regulation of construction noise near the bird habitat areas during bird breeding, nesting and roosting as required by LUP Policy 7.1.2-4. Further, the IP would allow the removal of trees in the Commercial Core and Visitor Serving Commercial areas, regardless of whether the trees are habitat for any of the birds listed in the above LUP policies, if the trees are replaced on a 1:1 basis. The biological survey of the Harbor that was done during the EIR process found that no trees other than those located in Planning Area 1 are being used by herons or egrets or other wading birds, owls or raptors. However, the tree may in the future become habitat for the listed species. Additionally, the IP amendment does not contain adequate regulations to protect the coastal bluff from inappropriate development to protect the existing coastal sage scrub habitat and prevent erosion of the bluff face. For these reasons the IP amendment is not in conformance with the certified LUP is denied as submitted.

## **8. Locating New Development**

The type, location and amount of new development provided for in the certified LUP and issues it raises regarding the protection and enhancement of scenic and visual resources, the provision of adequate parking and non-automobile circulation, among other things, must be carried out in the Implementation Plan amendment.

### **Visual Resources**

The Commission found that the Dana Point Harbor Revitalization Plan LUP failed to protect the visual resources of the area and assure that the new Commercial Core development, the expansion of the existing hotel, and the future dry stack storage building would be consistent with the bulk and scale of the community. The Commission required policies to designate and protect significant public coastal views from several public vantage points; from Doheny State Beach, the bluffs surrounding the harbor and from other public areas, such as the Street of the Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point. Although the LUP recognized that certain development allowed in the LUP i.e., the 400-space dry stack storage building (PA 1), Commercial Core buildings (PA 1 and 2), and the Marina Hotel (PA 3), will have some impacts upon views from the designated view areas, the impacts were required to be minimized and significant visual impacts were not permitted. The Commission also addressed the impacts of the bulk, scale and height of the above future buildings on the existing community requiring that the building heights, excluding the dry stack storage building, be consistent with the existing community character. It was noted that the existing buildings within the Harbor are primarily 35 feet in height. The certified LUP contains the following policies, including Subsection 8.5.1, Bulk and Height Limitations, that were found to be necessary to protect visual resources the Harbor:

#### **8.1.1 General Development – Policies**

8.1.1-5 The development of unified or clustered commercial centers shall be encouraged. (Coastal Act Sections 30250, 30252)

8.1.1-8 Encourage buildings and exterior spaces that are carefully-scaled to human size and pedestrian activity.

8.1.1-9 Encourage outdoor pedestrian spaces, sidewalks and usable open space in all new development.

8.1.1-10 Encourage aesthetic roof treatment as an important architectural design feature.

8.1.1-16 All fences and walls within the Harbor area will be designed to have a minimum impact on coastal and scenic views from public areas. If enclosures used to shelter outside eating areas are designed using clear materials, they shall be etched or tinted to

make them visible to birds and with awnings or covers that are integrated into the architectural design of the buildings.

8.1.1-17 Architectural and building articulation will have a form that complements the Harbor area and natural setting, when viewed from within the Harbor or the surrounding area (both from land and sea). High, uninterrupted wall planes are to be avoided.

8.1.1-18 All accessory buildings and structures will be consistent with the main structure in materials, color palette, roof pitch and form.

8.1.1-19 All roof-mounted mechanical equipment and communication devices that are visible to and along the Harbor will be hidden behind building parapets or screening materials from both ground level and elevated areas to the extent feasible. Ground-level mechanical equipment, storage tanks and other similar facilities shall be screened from view with dense landscaping and/or walls of materials and finishes compatible with the adjacent areas. In addition, service, storage, maintenance, utilities, loading and refuse collection areas will be located generally out of view of public right-of-ways and uses adjacent to the development area.

8.1.1-20 All new solid waste (refuse / trash collection) areas will be screened from public view.

8.1.1-21 Architectural elements (including roof overhangs, awnings, dormers, etc.) will be integrated into the building design to shield windows from the sun and reduce the effects of glare.

8.1.1-22 The project will utilize minimally reflective glass and other materials used on the exteriors of the buildings and structures will be selected with attention to minimizing reflective glare.

8.1.1-26 Roof-mounted solar panels, metal panels and skylights should incorporate non-reflective materials and be designed to point away from roadways to the extent possible while assuring proper function.

8.1.1-27 The parking deck design shall include a light well that separates the upper deck area, allowing light and/or installation of landscaping elements to enhance the visual appearance of the structure.

## **8.4 Scenic and Visual Resources**

### **8.4.1 Scenic and Visual Resource – Policies**

8.4.1-1 Protect and enhance public views to and along the coast through open space designations and innovative design techniques. (Coastal Act Section 30251)

8.4.1-2 Ensure development within designated and proposed scenic corridors are compatible with scenic enhancement and preservation and shall not significantly impact public views through these corridors. (Coastal Act Section 30251)

8.4.1-3 Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act Section 30250)

8.4.1-4 Textured paving will be used to identify lookouts, pathway crossings and edge treatments. All landscape areas will be planted consistent with landscape plans approved through the Coastal Development Permit process to preserve and enhance ocean views.

8.4.1-5 In areas that abut Planning Area 7, a landscape buffer will be maintained. All new plant material in recreational areas will be native or non-invasive and drought tolerant species to provide a transition between natural and ornamental areas.

8.4.1-6 The planting of trees within new development will provide a visually soft and natural backdrop while framing and protecting significant public view opportunities.

8.4.1-7 Vertical landscape elements and setbacks between buildings shall be incorporated into the design of new development to break up building massing.

8.4.1-8 Street and parking lot lighting shall be positioned to enhance the vehicular and pedestrian safety. Lighting shall be concentrated on intersections and pedestrian crosswalks and shall be directed downward.

8.4.1-9 All exterior lighting will be designed and located to avoid intrusive effects on the adjacent uses atop the bluffs and Doheny State Beach. New light fixtures will be designed to direct light on-site, away from other areas and where feasible (not interfering with public safety), minimize impacts to nesting birds or other sensitive biological resource areas within the boundaries of the LCP.

## **8.5 Coastal Views**

### **8.5.1 Bulk and Height Limitation**

#### **Bulk and Height Limitation – Policies**

8.5.1-1 New building architecture shall encourage irregular massing of structures.

8.5.1-2 Building massing should be asymmetrical and irregular with offsets in plan, section and roof profile.

8.5.1-3 All new development in the Harbor shall not exceed a maximum building height of thirty-five (35) feet; exceptions to the 35 foot height limit include the following:

- Dry Stack Boat Storage building in the Marine Services Commercial area (Planning Area 1) shall have a maximum building height of sixty-five (65) feet;
- Commercial Core area (Planning Area 2) buildings fronting on the Festival Plaza or structures fronting the East Marina Boat Basin (Planning Area 10) shall be a maximum of sixty (60) feet high;

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- Visitor-Serving Commercial (Planning Area 3) building(s) shall have a maximum height of fifty (50) feet;
  
- Elevators, appropriately screened mechanical units and chimneys that do not exceed the ten percent (10%) of the total roof area for all new and existing/remodeled structures, should conform to the applicable height limit, but may exceed that height limit by no more than five (5) additional feet.

These heights are only allowed to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced. The height of the buildings, excluding the dry stack storage building, should be consistent with the community character.

The limitations on height for the Marine Services Commercial area (Planning Area 1) shall not apply to shipyard cranes and/or other equipment necessary to provide for boat maintenance and repair.

8.5.1-4 The appearance of long, continuous row structures shall be avoided through the provision of open spaces, setbacks from public walkways, varied roof treatments, staggered, stepped-back exterior building facades and incorporation of a variety of building designs, materials and colors.

As indicated by the above policies, the certified LUP contains numerous policies for the protection of the visual resources of the Harbor. As proposed the IP amendment does not carry out the above policies because the IP fails to acknowledge that the height limit throughout the Harbor is 35 feet maximum and that a height exception is allowed only in specific Planning Areas, for certain structures, only if certain criteria is met for the protection of significant coastal public views and the community character, as specified in LUP Policy 8.5.1-3. Clarification should be provided in the IP to prevent any incorrect assumption that a height exception is guaranteed. Further, the IP amendment does not define the geographic boundaries of the community or determine the existing community character. Defining the community and the existing community character is necessary in order to determine if buildings can be granted an exception, and if so, to what extent, to the 35 foot maximum height limit and if so, to what extent. For these reasons the proposed IP amendment must be denied as submitted.

### **Conclusion**

As detailed above, the proposed Implementation Plan amendment is not in conformance with or adequate to carry out the tidelands/submerged lands, coastal-dependent/coastal-related development, visitor serving development, lower cost overnight accommodations/limited use overnight accommodations, transit/smart growth, public access and recreation, coastal resources protection and new development policies of the certified Dana Point Harbor LUP. Therefore, the Implementation Plan amendment must be denied as submitted.

**D. Findings for Approval of Implementation Plan Amendment 1-10 if Modified as Recommended**

**1. Incorporation of Findings for Denial of Implementation Plan Amendment 1-10 as submitted.**

The findings for denial of the Implementation Plan amendment as submitted are incorporated as though fully set forth herein.

**2. Proposed Changes that are Consistent if Modified**

**a) Tidelands and Submerged Lands and Coastal-Dependent and Coastal-Related Development**

As detailed in Section C. of the staff report the proposed IP amendment is not in conformance with and is inadequate to carry out the Tidelands and Submerged Lands and Coastal-Dependent and Coastal-Related Development policies of the certified LUP. The IP amendment submittal does not require maximum public access to the Tidelands and Submerged Lands for the higher priority coastal-dependent boating and boating support coastal-related uses. The submittal would allow additional private (membership) yacht clubs and does not require the three existing private (membership) facilities to provide maximum public access on the bulkhead within their lease area, nor boating opportunities or use of their facilities by the general public as required by the LUP. Nor does the IP amendment submittal provide for maximum boating use of the Harbor water **by maintaining the existing quantity and where feasible, providing new anchorages**, and **boating support uses on the** land areas by adopting a policy giving priority to the provision of boats smaller than 25 ft in length and a no net loss goal in the redevelopment of the marina as required by the certified LUP; nor does the IP require the retention of in-water slips until a Coastal Development Permit is issued to address any loss of slips and dry boat storage needs; allows for a large non-priority marine retail sales building and its associated parking in the planning area that should be reserved for boating and boating support uses, **including an area for do-it-yourself or boat-owner self-repairs** (Planning Area 1), among other things. Only as modified as suggested in Exhibit 5, Dana Point Harbor District Regulation, Chapter 7 Marine Commercial District Regulation, Section 7.4 (Exhibit 5, page 55) to prohibit new private (membership) yacht clubs or sailing associations as an allowable use and to further modify Section 7.5 by adding subsection (p) requiring that the existing private clubs/associations provide maximum public access on the bulkhead within their lease area, provide boating safety classes and boating opportunities at low cost or free, and use of their facilities by the general public as required by the LUP and as shown in Exhibit 5, Section 7.5 (p) page 58; and to modify the submittal as shown in Exhibit 5,

page 85 to add subsection (n) to Section 12.5, Chapter 12 District Regulations for Planning Areas 9 and 10 (East and West Marinas) that requires the marina redesign to be guided by a policy of no net loss, to prioritize the provision of slips 25 ft and less and to keep the average slip length at or below 32 feet, and to add the other regulations shown on page 84-85 of Exhibit 5 to maximize recreational boating; and to prohibit stand alone marine retail sales uses in Planning Area 1 (Exhibit 5, page 30) **and to provide for a boat-owner self-repair area in proximity to the shipyard or the future dry storage facility where boat-owners can perform repairs to their own vessels by modifying subsections c) and e) to Chapter 4, Section 4.2 (Exhibit 5, page X) and add a new subsection w) to Chapter 4, Section 4.5 9Exhibit 5, page X)**, as well require the retention of at least 1.6 acres (excluding any water area) for an adequately sized shipyard (Exhibit 5, page 33, Section 4.5(p) as well as the other regulations added to Planning Area 1 District Regulations as shown on pages 33-35, Exhibit, can the proposed IP be found in conformance with and adequate to carry out the certified LUP.

## **b) Locating New Development**

### **1) Visual Resources Protection**

The certified Land Use Plan contains Development Policies regarding the protection and enhancement of scenic and visual resources, the provision of adequate parking and non-automobile circulation, among other things. These LUP policies, cited previously, require that significant public coastal views from several public vantage points; from Doheny State Beach, the bluffs surrounding the harbor and from other public areas, such as the Street of the Golden Lantern and Dana Point Harbor Drive, which are both designated as scenic corridors by the City of Dana Point be protected and enhanced. The Commission found that the Dana Point Harbor Revitalization Plan LUP as proposed failed to protect the visual resources of the area and assure that the new Commercial Core development, the expansion of the existing hotel, and the future dry stack storage building would be consistent with the bulk and scale of the community. Therefore, the Commission required policies to designate and protect and enhance the significant public coastal views as shown on Exhibit I-8.1 (Exhibit 7). Although the LUP recognized that certain development allowed in the LUP i.e., the 400-space dry stack storage building (PA 1), Commercial Core buildings (PA 1 and 2), and the Marina Hotel (PA 3), will have some impacts upon views from the designated view areas, the impacts were required to be minimized and significant visual impacts were not permitted. The Commission also addressed the impacts of the bulk, scale and height of the above future buildings on the existing community requiring that the building heights, excluding the dry stack storage building, be consistent with the existing community character. It was noted that the existing buildings within the Harbor are primarily 35 feet in height.

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Policy 8.5.1-3 of the certified LUP states:

8.5.1-3 All new development in the Harbor shall not exceed a maximum building height of thirty-five (35) feet; exceptions to the 35 foot height limit include the following:

- Dry Stack Boat Storage building in the Marine Services Commercial area (Planning Area 1) shall have a maximum building height of sixty-five (65) feet;
- Commercial Core area (Planning Area 2) buildings fronting on the Festival Plaza or structures fronting the East Marina Boat Basin (Planning Area 10) shall be a maximum of sixty (60) feet high;
- Visitor-Serving Commercial (Planning Area 3) building(s) shall have a maximum height of fifty (50) feet;
- Elevators, appropriately screened mechanical units and chimneys that do not exceed the ten percent (10%) of the total roof area for all new and existing/remodeled structures, should conform to the applicable height limit, but may exceed that height limit by no more than five (5) additional feet.

***These heights are only allowed to the extent that significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced. The height of the buildings, excluding the dry stack storage building, should be consistent with the community character. (emphasis added)***

The limitations on height for the Marine Services Commercial area (Planning Area 1) shall not apply to shipyard cranes and/or other equipment necessary to provide for boat maintenance and repair.

The above LUP policy makes it clear that the height limit throughout the Harbor is 35 feet maximum, and that a height exception is not automatic. Any approved height exception must meet the four criteria stated above in Policy 8.5.1-3; significant coastal public views through scenic corridors and from scenic viewpoints must be protected and the height of the buildings, excluding the dry stack storage building, should be consistent with the community character.

The proposed Dana Point Harbor District Regulations Implementation Plan amendment is not adequate to carry out the above LUP Policy 8.5.1-3. The City of Dana Point proposes to meet the requirements of LUP Policy 8.5.1-3 through (1) General Regulation 6. Building Height Requirements, found in Chapter 3, General Regulations and Special Provisions of the Dana Point Harbor District Regulations Implementation Plan (Exhibit 5, page 7) and (2) building height provisions in the Development Standards and Regulations Sections of the District Regulations of Planning Areas 1, 2, and 3 where the dry boat storage facility, the Commercial Core development and the hotel, respectively, would be located. Planning Area 1 Standards and Regulations are covered in Chapter 4, Marine Services Commercial (MSC) in the proposed District Regulations Implementation Plan (Exhibit 5, pages 28-35). Planning Area 2 standards

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and regulations are covered in Chapter 5, Day Use Commercial (DUC) in the proposed Implementation Plan (Exhibit 5, pages 36-44) and Planning Area 3 standards and regulations are covered in Chapter 6, Visitor-Serving Commercial (VSC) in the proposed Implementation Plan (Exhibit 5, pages 45-52).

The proposed General Regulation and Standards and Regulations for the three affected Planning Areas are not adequate to meet the requirements of LUP Policy 8.5.1-3. General Regulation 6, Building Height Requirements as proposed simply states that the building height requirements for each land use district are found in the district regulations and that height is measured as set forth in the Chapter 18, Definitions (Exhibit 5, page 7). A review of the proposed district regulations for Planning Areas 1, 2 and 3, the Planning Areas where structures would be located that could potentially be allowed an exception to the 35 foot maximum height limit, indicates that they too are inadequate to carry out the provisions of LUP Policy 8.5.1-3. As proposed the district regulations for Planning Area 1 (Marine Services Commercial), where the dry stack storage building would be located, found in Chapter 4 of the Dana Point Harbor District Regulations Implementation Plan does not contain the requirements found in the applicable LUP Policy above in order to protect the visual resources of the area. Section 4.5(c) Building height limit, allows the dry boat storage building to be sixty-five (65) feet by right (Exhibit 5, page 30). Although the LUP Policy allows the dry boat storage building to be exempted from the requirement of being consistent with the community character, the LUP does not exempt the structure from the requirement to protect significant public coastal views.

Similarly, as proposed, the proposed Development Standards and Regulations for Planning Area 2, where the Commercial Core development is located, does not include the requirements contained in LUP Policy 8.5.1-3. Section 5.5(c) of the District Regulations for Planning Area 2 allows certain Commercial Core buildings at sixty (60) feet high by right and makes no mention that these are height exceptions and is allowed only if certain criteria are met to protect the scenic resources of the area, including the requirement to be consistent with character of the area (Exhibit 5, page 38). Likewise, as proposed, the Development Standards and Regulations for Planning Area 3, where the hotel is located, found in Chapter 6 of the District Regulations, does not carry out the applicable LUP Policy. Section 6.5(c) also allows a fifty (50) foot high hotel to be built by right and does not acknowledge the Harbor-wide 35 foot maximum height limit and that additional height is allowed by exception only if the criteria specified in LUP Policy 8.5.1-3 are met (Exhibit 5, page 47). Therefore, as proposed the IP amendment cannot be found consistent with the applicable LUP policies and must be modified.

As indicated in Section II of this staff report, the Commission's suggested modifications are found in Exhibit 5 of this staff report. The Commission's suggested deletions **recommended in the December 29, 2010 staff report** are shown in strikethrough text and suggested additions **recommended in the December 29, 2010 staff report are shown in bold, underlined text.** **The Commission's revisions made during the January 12, 2011 hearing are also shown. Suggested added language is shown**

**in bold, italic, double underline and suggested deleted language is shown in bold, double strikethrough.**

1. General Regulation 6, Building Height Requirements, found in Chapter 3, General Regulations and Special Provisions of the Dana Point Harbor District Regulations Implementation Plan (Exhibit 5, page 7) are proposed to be modified as such:

**6. Building Height Requirements**

The building height requirements shall be as specified by each land use district of these Dana Point Harbor District Regulations. The method used for measuring building height is set forth in Chapter II-18, *Definitions*. **All new development in the Harbor shall not exceed a maximum building height of thirty-five (35) feet; any exceptions to this height limitation shall be required to demonstrate that: (1) significant coastal public views through scenic corridors and from scenic viewpoints are protected and enhanced; (2) adequate facilities have been provided to enhance boating use, including but not limited to designated boater parking; (3) public/boater access to dry boat storage/public launching facilities are maintained and enhanced; (4) design features have been incorporated into the buildings to promote a village atmosphere and maintain the existing community character of the area and (5) elevated public viewing areas of the waterfront are provided.**

2. Staff is also proposing the addition of a new General Regulation 8, Community Character, **as modified by the Commission at the January 12, 2011 hearing,** as follows:

**8. Community Character**

**All new buildings in the Harbor shall be consistent with the character of the community in architectural form, bulk and height of the community, including other structures located ~~in the Coastal Zone boundary of the City of Dana Point~~ within one-half mile of the Dana Point Harbor LCP boundary. New development within the Harbor shall provide a scale and setting for retail merchants and restaurants that encourages pedestrian opportunities through the use of widened sidewalks, outdoor plazas, promenades, courtyards and landscape design. Long, continuous row structures shall be avoided through the provision of open spaces, setbacks from public walkways, varied roof treatments, staggered and stepped-back exterior building facades and the incorporation of a variety of building designs materials and colors.**

3. Staff is recommending the following modifications to Chapter 4 Dana Point Harbor District Regulations, Marine Services Commercial Planning Area 1 Regulations, 4.5 (c) Development Standards and Regulations, pertaining to building height limit, Exhibit 5, page 30, as shown:

#### 4.5 Development Standards and Requirements

The following standards shall apply except as otherwise established by an approved Coastal Development Permit per Chapter II-16, Discretionary Permits and Procedures

- a) Building site area: No minimum.
- b) Building site width and depth: No minimum.
- c) Building height limit: **Thirty-five (35) feet maximum.** For the Dry Boat Storage building, **an exception to the thirty-five (35) foot maximum height limit may be approved, to a maximum of sixty-five (65) feet, sixty-five (65) feet provided significant coastal public views through scenic corridors and from scenic viewpoints as shown on Exhibit I-8.1 of the Land Use Plan, are protected and enhanced.** Maximum for the potential lighthouse, ~~seventy (70) other buildings, thirty-five (35) feet maximum.~~ Elevators, appropriately screened mechanical units and chimneys that do not exceed ten percent (10%) of the total roof area for all new and existing, remodeled structures not in excess of thirty-five (35) feet, nor exceed the height limit by more than five (5) feet shall be permitted. The limitations on height for Planning Area 1 shall not apply to shipyard cranes and/or other equipment necessary to provide for boat maintenance and repair.

4. Staff is also recommending the following modifications to Chapter 5 Dana Point Harbor District Regulations, Day Use Commercial Planning Area 2 Regulations, 5.5 (c) Development Standards and Regulations, pertaining to building height limit, Exhibit 5, page 38, as shown:

#### 5.5 Development Standards and Requirements

The following standards shall apply except as otherwise established by an approved Coastal Development Permit per Chapter II-16, *Discretionary Permits and Procedures*.

- a) Building site area: No minimum.
- b) Building site width and depth: No minimum.
- c) Building height limit: ~~For new Commercial Core buildings fronting on Festival Plaza, pedestrian bridge connected to Festival Plaza or structures fronting on the East Marina Boat Basin (Planning Area 10), sixty (60) feet maximum; for all other buildings, thirty-five (35) feet maximum.~~ Elevators, appropriately screened mechanical units and chimneys that do not exceed ten percent (10%) of the total roof area for all new and existing, remodeled structures not in excess of thirty-five (35) feet, nor exceed the height limit by more than five (5) feet shall be permitted.

**All new development shall not exceed a maximum building height of thirty-five (35) feet; any exceptions to this height limitation, up to a maximum of sixty (60) feet, shall be required to demonstrate all of the following:**

**1. Significant coastal public views through scenic corridors and from scenic viewpoints as shown on Exhibit I-8-1, *Dana Point Harbor View Corridors*, of the certified Land Use Plan are protected and enhanced.**

**2. The combination of architectural design and building heights shall utilize irregular massing with offsets in plan, section and roof profile to break-up the façade of the structures and provide a pedestrian setting when viewed from the Festival Plaza and marina areas.**

**3. The buildings are connected to the parking deck podium structure used to create direct vehicular and pedestrian access to the Day Use Commercial amenities, with additional unobstructed views of the ocean and marinas provided from new elevated public vantage points.**

**4. *With the exception of Conceptual Building 4 (the new building proposed in the Dana Wharf area), the ~~The~~ additional height above the forty (40) foot height limit shall be for architectural features only that do not increase the gross floor area for the purpose of determining parking requirements.***

**5. No more than fifty percent (50%) of the total roof area of the structures shall exceed forty (40) feet in height and no more than twenty-five percent (25%) of the same roof area shall exceed fifty (50) feet in height. *An exception to this limitation may be permitted for Conceptual Building 4 (the new building proposed in the Dana Wharf area) with a building footprint of less than 5,000 sq. ft., if the majority of the upper level is used to accommodate a harbor-wide view for purposes of harbor-related public safety operations.***

**6. Public/boater access to the dry boat storage/public boat launching facilities are maintained.**

**7. Architectural elements (see Site Development Standard e, below) including building heights have been incorporated into the design of the buildings to promote a village atmosphere and maintain the existing community character of the area.**

5. Staff is also recommending the following modifications to Chapter 6 Dana Point Harbor District Regulations, Visitor Serving Commercial Planning Area 3 Regulations, 6.5 (c) Development Standards and Regulations, pertaining to building height limit, Exhibit 5, page 47, as shown:

**6.5 Development Standards and Requirements**

The following standards shall apply except as otherwise established by an approved Coastal Development Permit per Chapter II-16, *Discretionary Permits and Procedures*.

- a) Building site area: No minimum.
- b) Building site width and depth: No minimum.
- c) Building height limit: ~~Fifty (50) feet maximum. Elevators, appropriately screened mechanical units and chimneys that do not exceed ten percent (10%) of the total roof area for all new and existing, remodeled structures not in excess of thirty five (35) feet, nor exceed the height limit by more than five (5) feet shall be permitted.~~

**All new development shall not exceed a maximum building height of thirty-five (35) feet; any exceptions to this height limitation, up to a maximum of fifty (50) feet, shall be required to demonstrate all of the following:**

- 1. Significant coastal public views through scenic corridors and from scenic viewpoints as shown on Exhibit I-8-1, Dana Point Harbor View Corridors, of the certified Land Use Plan are protected and enhanced.**
- 2. For all new structures, the combination of architectural design and building heights shall utilize irregular massing with offsets in plan, section and roof profile to break-up the façade of the structures and provide a pedestrian setting.**
- 3. Public/boater access is maintained.**
- 4. Architectural elements (see Site Development Standard e, below) have been incorporated into the design of the buildings to promote a village atmosphere and maintain the existing community character of the area.**

The above modifications are necessary to bring the above district regulations into conformance with and adequate to carry out certified LUP Policy 8.5.1-3. This LUP Policy was discussed by the Commission during several actions on the Land Use Plan amendment. At the October 8, 2009 public hearing at which the Commission approved the Dana Point Harbor Revitalization Plan LUP amendment this Policy was further modified by the Commission to add the requirement that any buildings granted a height exception be found consistent with the character of the community in terms of the building's height, among the other architectural and design features incorporated to

minimize visual impacts of the taller structure. At the June, 2010 Commission meeting at which the revised findings were adopted the Commission further clarified its intent with regards to the protection of community character with increased building heights. Although the revised findings were adopted with clarifying language the Commission did not concur in the Executive Director's determination that the local government had incorporated its suggested modifications accurately with regards to Policy 8.5.1-3 due to the clarify language that was added during the deliberation on the adoption of the revised findings. Finally, when the Executive Director's determination was brought back to the Commission in October, 2010 the Commission concurred in the Executive Director's determination that the local government had accurately adopted the suggested modifications, as clarified in June, 2010 however additional discussion ensued with regards to the existing character of the Harbor area. Although the Commission did not establish the geographic boundaries of what it considered the community of the Harbor, the Commission noted that the existing buildings within the Dana Point Harbor are primarily 35 feet in height. The Commission further found at the October 2010 meeting that subject IP amendment must make it clear that any height exception above the 35 foot maximum height limit is not guaranteed. The allowable bulk and scale of the commercial building out of the Harbor area will need to be determined taking into consideration all of the certified LUP policies, particularly those that require that coastal-dependent, coastal-related support uses and water-oriented recreational uses be given priority of visitor-serving commercial uses and that parking resources are adequate to serve the commercial development after the priority use land area and priority use parking has been provided for. The Commission directed staff to make these changes to the Commission's concurrence with the Executive Director's determination. Exhibit 4 contains the changes as directed by the Commission.

Specifically, Suggested Modification 1, which modifies General Regulation 6, Building Height Requirements is necessary to clarify that the maximum building height throughout the Harbor is 35 feet maximum. Therefore all building heights approved above 35 feet is through an exception. Further, the modification adds the criteria by which proposed height exceptions will be measured, as required by LUP Policy 8.5.1-3. Suggested modification 2 adds a new General Regulation, number 8 to the IP that would define the geographic boundaries of the community within the meaning of determining consistency of a proposed building's height, among other things, when a height exception is requested. The regulation also requires that the buildings be designed to encourage pedestrian opportunities with staggered and stepped-back exterior building design features. The suggested regulation was developed with input from the City/County reflecting their desire to consider the building heights throughout the Coastal Zone boundary of the City, and not just the immediate Harbor LCP area, in determining whether a proposed height is consistent with the existing community character. **However, the Commission found at the January 12, 2011 hearing that it is inappropriate to use such a wide geographic area and required that only the area within one-half mile of the Dana Point Harbor LCP boundary should be considered when determining whether proposed development is consistent with the character of the community.**

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Suggested modifications 3, 4 and 5 are necessary to bring the proposed development regulations 4.5(c), 5.5(c) and 6.5(c) regarding the maximum height limit in the Marine Services Commercial Area (Planning Area 1), the Day-Use Commercial Area (Planning Area 2) and the Visitor-Serving Commercial Area (Planning Area 3) consistent with LUP Policy 8.5.1-3 with regards to any dry boat storage structure, Commercial Core buildings or any future hotel expansion, respectively. Modification 3 acknowledges that the LUP Policy does not require the boating support facility to be found consistent with the character of the community but it is modified to require that the structure be sited and designed to protect and enhance significant coastal views from designated view corridors and public viewpoints. The protected public coastal view corridors and viewpoints are depicted in the certified LUP in Exhibit 8.1 (Exhibit 7). However, modifications 3, 4 and 5 make it clear that exceptions to the 35 foot height limit are not guaranteed, and when exceptions are granted, the maximum height limits are 65 ft., 60 ft. and 50 ft., respectively.

Further, suggested modification 4 is necessary to bring the proposed development regulations regarding the maximum height limit in the Day Use Commercial Area (Planning Area 2) consistent with LUP Policy 8.5.1-3 with regards to the Commercial Core development. Similar to the above modifications to the building height for Planning Area 1, the necessary modifications require that any structure within the Commercial Core development area that is granted a height exception has to protect and enhance the LUP designated view corridors and public viewpoints. However, Commercial Core building height exceptions would have to be found consistent with the community, among other criteria. As discussed in the Parking subsection below, the intensity and phasing of Commercial Core development must be regulated to assure that the land area and parking supply for priority boating, boating support and other water-oriented recreational uses are provided for. For this reason there are additional development standards contained in the suggested modifications to Section 5.5(c), namely standards 5.5(c) 3-6. To further regulate the amount of any structure approved above the maximum height limit of 35 feet, 5.5(c).3 requires that the building provide unobstructed views of the ocean and marinas from elevated public viewing areas. Suggested modification 5.5(c).4 requires any additional height above forty (40) feet be limited to architectural features only, and not contain additional gross floor area that would need additional parking, **with the exception of Conceptual Building 4 (the new building proposed in the Dana Wharf area)**. Suggested modification 5.5(c).5 requires the bulk of the building to be reduced by restricting the amount of the roof area that can go up to 40 and 50 feet in height. **However, the Commission allowed for an exception to this limitation to be granted for Conceptual Building 4 (the new building proposed in the Dana Wharf area) with a building footprint of less than 5,000 sq. ft., if the majority of the upper level is used to accommodate a harbor-wide view for purposes of harbor-related public safety operations.** Finally, Suggested modification 5.5(c).6 requires that access to surface dry boat storage areas and the public boat launch ramp facility be maintained.

Finally, suggested modification 5 similarly carries out the requirements of LUP Policy 8.5.1-3 by requiring that any structure within the Visitor Serving Commercial Planning Area 3 that is granted a height exception has to protect and enhance the LUP designated view corridors and public viewpoints. The maintenance of boater and public access to parking supplies in this Area is also required. An exception to the 35 foot maximum height limit may be allowed in Planning Areas 2, up to a maximum of sixty feet, if the required criteria is met in order to protect public scenic views and community character. However, any additional building height above forty feet cannot not be used for additional gross floor area that would require additional parking. The additional height is allowed only to provide architectural features.

Only as modified to incorporate the above suggested modifications into General Regulations and Development Standards and Requirements will the proposed IP amendment be in conformance with and adequate to carry out LUP Policy 8.5.1-3.

## **2) Parking**

The certified Land Use Plan contains Development Policies regarding the provision of adequate parking and non-automobile circulation, among other things. These LUP policies, cited previously require that a comprehensive parking management plan be prepared to make better use of existing and planned parking resources for new commercial development as well as maintaining designated boater parking, to expand and enhance the public boat launch ramp facility by providing additional and larger vehicle with tow parking spaces and to maintain parking for the use of Baby Beach and the park areas located in Planning Areas 1 and 4. Although the certified LUP allowed a reduction in the required parking ratio for boater parking, reducing the parking allocation required for boat slips from 0.75 to 1.6 spaces per boat slip to 0.6 spaces per slip, the LUP requires that the Commercial Core and other lower priority commercial uses throughout the Harbor not adversely impact the parking supply and land area available for the higher priority coastal-dependent and water-oriented recreation.

LUP Policy 6.2.5-7 requires that a parking management program with the first CDP application for Commercial Core development that, among other things, assesses current and anticipated future parking demands throughout the harbor, while prioritizing and avoiding adverse impacts on priority boater parking and boat launch ramp parking opportunities. The parking needs of the general public visiting the harbor for boat and non-boat related recreational purposes shall also be considered, especially with regard to any underutilized parking that may exist in Planning Area 4. LUP Policy 6.2.5-10 requires the construction of proposed parking facilities in new development to be prioritized to augment parking for Harbor visitors and boaters. Further, certified LUP Policy 6.2.5-13 requires that prior to the approval of any Coastal Development Permit for any new development that a construction-phase Parking Management Plan (PMP) be prepared that ensures public access will be retained to the extent it can be safely provided and to reduce construction congestion/ conflicts.

Finally, in keeping with providing maximum public access and recreational opportunities, including lower cost recreational opportunities, LUP Policy 6.2.5-15 requires that the existing parking in the Marine Commercial Planning Area 4 located on the island that supports access to lower cost recreational amenities (e.g. walkways, picnic areas, green space and fishing) shall not be reduced. Those parking spaces shall not be used to support other uses in Planning Area 4 (e.g. expanded yacht clubs, restaurant, harbor patrol, etc.).

The proposed IP amendment is not in conformance with or adequate to carry out the above public access and recreation parking policies of the certified LUP. The proposed IP amendment contains Chapter 14, Off-Street Parking Standards and Regulations (Exhibit 5, pages ~~93-105~~ 89-100). The Off-Street Parking Standards and Regulations provide general parking provisions, parking ratios for the various uses allowed in the Harbor, and provisions for joint or shared use of parking spaces and exceptions to the parking standards. The proposed Plan does not provide the LUP required Parking Management Plan, carry out the required commercial development phasing requirements to ensure that adequate land area and parking for higher priority boating and water-oriented recreational uses are provided, and proposes to allow new commercial development to rely on unlimited joint or shared use parking, including parking that the LUP designates for higher priority coastal dependent and water-oriented recreational uses.

The suggested modifications to Chapter 14 are extensive and include a new section, 14.6 Parking Management Plan (PMP) as required by the certified LUP (Exhibit 5, pages ~~102-105~~ 97-100). The PMP is required to be submitted with the first CDP for Commercial Core development and is to be updated routinely in order to maximize the utilization and provision of parking and the long-term parking needs. The PMP assures the provision of the required parking for priority uses in the amounts and locations required by the certified LUP and the phasing of new commercial development such that parking for higher priority uses is also provided as required by the certified LUP. As stated, **the PMP is required to be submitted with the first Coastal Development Permit for development of the Commercial Core area and will be used in all future redevelopment of the Harbor (Exhibit 5, Section 14.6, page 98). However, at the January 12, 2011 hearing the Commission found that it is necessary to determine the accurate (baseline) number of slips in each area of the Harbor, the number of dry boat storage spaces, and the number of parking spaces which currently exists, based on legal and permitted development, in order to develop an effective PMP.** The PMP also includes provisions dealing with temporary impacts to parking due to construction and requires that parking losses be minimized during construction, to the maximum extent feasible, and that shuttles be used to reduce temporary impacts to access. Finally, the modifications to Section 14.2 General Provisions, subsection(c) addresses joint-use or shared parking. The suggested modifications place a prohibition on the use of boater parking in joint or shared use parking plans and a limitation on the use the public boat launch ramp facility to allow

joint or shared use of parking only for other boating uses; during the non-peak use summer season; and allows a maximum of 20% of the parking spaces to be used, but not including those spaces adjacent to the boat launching area, provided that a parking study demonstrates that the proposed number of parking spaces are available for such use, (Exhibit 5, pages ~~93-94~~ 89-90). Section 14.6 requires that adequate parking to support the Commercial Core development be provided within the Commercial Core.

Only as modified to include the changes to the proposed Chapter 14, Off-Street Parking Standards and Regulations as outlined above and shown in Exhibit 5, pages 93-105 is the proposed Dana Point Harbor District Regulations Implementation Plan in conformance with and adequate to carry out the applicable LUP policy dealing with public access parking.

### **3) Water Quality**

In order to maintain and enhance water quality of the Harbor, the Commission is requiring that the City of Dana Point include adequate disposal facilities in the reconstruction of the marinas throughout the Harbor. Both pump-out facilities to serve each boat that has on-board sanitary facilities and dump stations for the smaller boats should be assessed at the time of marina reconstruction. The record of use of the existing pump-out facilities is one factor that should be considered in determining the appropriate numbers and locations of disposal facilities. Suggested modifications have been added to the Dana Point Harbor District Regulations to carry out this requirement.

#### **c) Coastal Resource Protection**

Protection of Coastal Resources is a primary goal in the certified LUP. The LUP indicates that is coastal sage scrub habitat on the coastal bluff face at the northern boundary of the LCP area in Planning Area 7. During the EIR process for the original 2006 Dana Point Harbor Revitalization Plan LCP Amendment it was determined that there are also protected bird species such as the black-crowned night heron, snowy egret as well as raptors present in the Harbor. Herons and egrets nest, roost and breed in non-native trees located in an existing park area in at the southern end of Planning Area 1. The LUP required that this area be given a land use designation of Recreation (R) as opposed to the Marine Service Commercial (MSC) designation of the surrounding area (see Exhibit 5, page 124, Exhibit 17.1). The certified LUP contains policies to ensure the long-term protection of breeding, nesting and roosting habitat for bird species listed pursuant to the Federal or California Endangered Species Acts, California bird species of special concern, and wading birds (herons or egrets) as well as owls and raptors. Policies 7.1.2-1 through 7.1.2-3 of the certified LUP, as shown above in Section C, protect the breeding, nesting and roosting habitat of these important bird species.

The proposed IP amendment fails to include the required regulations and special provisions as required by LUP Policies 7.1.2-1 through 7.1.2-3 to carry out the long-term

protection, including the regulation of construction noise near the bird habitat areas during bird breeding, nesting and roosting as required by LUP Policy 7.1.2-4. Further, the IP would allow the removal of trees in the Commercial Core and Visitor Serving Commercial areas, regardless of whether the trees are habitat for any of the birds listed in the above LUP policies, if the trees are replaced on a 1:1 basis. The biological survey of the Harbor that was done during the 2006 EIR process found that no trees other than those located in Planning Area 1 were being used by herons or egrets or other wading birds, owls or raptors at the time. However, other trees may in the future become habitat for the listed species.

**The Commission found that the following Tree Trimming Procedures for Harbor Bird Habitat are necessary to provide for the long-term protection of the bird species habitat as required by the certified LUP. During the January 12, 2011 hearing the Commission heard testimony that a number of existing trees had been recently removed within the Harbor. Brad Gross, Director, OC Dana Point Harbor indicated that a number of trees had been removed in the Harbor within the last few months, some due to damage to the branches during a helicopter rescue of someone climbing on the steep bluffs along the northern boundary of the LCP area. He further stated that there are several entities responsible for tree trimming within the Harbor and that to his knowledge none of the trees that were removed contained nests. The Commission required that the trees that were removed prior to the January 12, 2011 Commission meeting be mitigated at a 2:1 ratio if they were providing habitat for the protected species and that any future trees containing evidence of nesting, breeding or roosting activity within the past five years that are removed pursuant to Special Provision 21, Tree Trimming Procedures for Harbor Bird Habitat, also be mitigated at a 2:1 ratio.**

**21. Tree Trimming Procedures for Harbor Bird Habitat**

In accordance with the acknowledgement that the City of Dana Point, County of Orange and OC Dana Point Harbor have an obligation to protect the public health and safety, while ensuring the long-term protection of wading bird heronries; breeding, roosting and nesting habitat of birds protected by the Fish and Game Code, the Migratory Bird Treaty Act; and owls, raptors and all bird species of special concern, the following Tree Trimming Procedures for Harbor Bird Habitat have been developed. These provisions govern the trimming or removal of any tree that is part of a heronry that has been used in the last five (5) years or of any tree that has been used for roosting, breeding and nesting within the past five (5) years as determined by a qualified biologist. Further, these provisions shall be undertaken in compliance with all applicable codes or regulations of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the U.S. Migratory Bird Treaty Act. Tree trimming or removal activities can be accomplished through a Harbor-wide Program Coastal Development Permit that incorporates the following parameters:

- a) Tree maintenance operations (including regularly conducted trimming or removal) shall be prohibited during the breeding and nesting season of the bird species referenced above (January through September) unless the Director, OC Dana Point Harbor in consultation with a qualified arborist determines that a tree

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causes danger to public health and safety. A health and safety danger shall be considered to exist if a qualified arborist determines that a tree or branch is dead, diseased, dying or injured and said tree or branch is in imminent danger of collapse or breaking away. The City/County shall be proactive in identifying and addressing diseased, dying or injured trees as soon as possible in order to avoid habitat disturbances during the nesting season. Trees or branches with a nest that has been active anytime within the last five (5) years shall not be removed or disturbed unless a health and safety danger exists.

- b) In the event that a tree providing habitat for the above species is identified as causing a danger to public health and safety by OC Dana Point Harbor and is removed, mitigation at a ~~4~~2:1 ratio shall be required. **Any trees removed on or before January 12, 2011 that provided habitat for the above species shall be mitigated at a 2:1 (two trees replaced for every one tree removed) within the Harbor. Eucalyptus trees shall not be used as replacement trees.** Replacement trees shall consist of native or non-native, non-invasive tree species. A tree replacement planting plan for each tree replacement shall be developed to specify replacement tree location, tree type, tree size (no less than a thirty-six (36) inch box size), planting specifications and a five-year monitoring program with specific performance standards. An annual monitoring report for tree replacement shall be submitted for the review of the Director, OC Dana Point Harbor and the City of Dana Point and shall be on file as a public record.

**Tree Maintenance During the Non-Breeding and Non-Nesting Season (October through December)**

- a) Prior to conducting regular tree maintenance activities, a qualified biologist or ornithologist shall conduct a survey of the trees to be trimmed or removed to detect nests of bird species identified by these provisions to identify specific trees with nests and submit the survey report(s) to the Director, OC Dana Point Harbor. OC Dana Point Harbor shall maintain a database of survey reports that includes a record of nesting trees that is made available as public information and shall be used as a basis for future tree trimming and removal decisions. Tree trimming and/or removal, if necessary, may proceed if a nest is present but no courtship or nesting behavior or evidence of that behavior is observed.
- b) Any trimming of trees containing a nest(s) of the species contained in these provisions shall be supervised by a qualified biologist or ornithologist and a qualified arborist to ensure that adequate nest support and foliage coverage is maintained in the tree, to the maximum extent feasible, in order to preserve the nesting habitat. Trimming of any nesting trees shall occur in such a way that the support structure of existing nests will not be trimmed and existing nests will be preserved, unless the City of Dana Point or OC Dana Point Harbor, in consultation with a qualified arborist, determines that such trimming is necessary to protect the health and safety of the public. The amount of trimming at any one

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time shall be limited to preserve the suitability of the nesting tree for breeding, roosting and/or nesting habitat.

- c) In the event that any protected birds continue to occupy trees during the non-nesting season, trimming shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased and given approval to proceed with maintenance operations.

Tree Maintenance During Breeding and Nesting Season (January through September)

If tree trimming or removal activities cannot feasibly avoid the breeding season because a health and safety danger exists, the following guidelines must be followed:

- a) A qualified biologist or ornithologist shall conduct surveys and submit a report at least one (1) week prior to the trimming or removal of a tree (only if it is posing a health or safety danger) to detect any breeding or nesting behavior in or within 300 feet of the work area. A tree trimming and/or removal plan shall be prepared by an arborist in consultation with the qualified biologist or ornithologist. The survey report and tree trimming and/or removal plan shall be submitted for the review and approval of the City of Dana Point, the California Department of Fish and Game and the U.S. Fish and Wildlife Service. OC Dana Point Harbor shall maintain the plans on file as public information and to be used for future tree trimming and removal decisions. The plan shall incorporate the following information:
  - 1. A description of how work will occur.
  - 2. Work must be performed using non-mechanized hand tools to the maximum extent feasible.
  - 3. Limits of tree trimming and/or removal shall be established in the field with flagging and stakes or construction fencing.
  - 4. Steps shall be taken to ensure that tree trimming will be the minimum necessary to address the health and safety danger while avoiding or minimizing impacts to breeding, roosting and nesting birds and their habitat.
- b) Prior to commencement of tree trimming and/or removal, the City of Dana Point or OC Dana Point Harbor shall notify in writing the California Department of Fish and Game and the U.S. Fish and Wildlife Service of the intent to commence tree trimming or removal.

All tree trimming and tree removal shall be conducted in strict compliance with these provisions. All trimmings must be removed from the site at the end of the business day and disposed of at an appropriate location. Any proposed change or deviation from the approved policy must be submitted to the Executive Director of the California Coastal Commission to determine whether an amendment to the Local Coastal

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Program is required or the proposed change(s) should be submitted to the City of Dana Point as an amendment to the Coastal Development Permit.

Only as modified as indicated above by the imposition of the Tree Trimming Procedures for Harbor Bird Habitat, Special Provision 21 of Chapter 3, General Regulations and Special Provisions, can the Implementation Plan Amendment 1-10 be found adequate to carry out the applicable LUP policies.

### **Conclusion**

For the reasons described above, only if modified as suggested can the proposed IP amendment be found to be consistent with and adequate to carry out the policies of the City's certified Land Use Plan. Therefore, the Commission finds that, as modified the proposed Implementation Plan amendment is consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

#### **IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – and the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing environmental impact reports (EIRs), among other things, in connection with their activities and approvals necessary for the preparation and adoption of local coastal programs (LCPs). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required, in approving an LCP submittal, to find that the proposal does conform with the provisions of CEQA, and to base any certification on a specific factual finding supporting the conclusion that the proposal "meets the requirements of [CEQA] Section 21080.5(d)(2)(i) ... , which requires that an activity will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." 14 C.C.R. Sections 13555(b), 1354(a), and 1354(f). The City of Dana Point LCP amendment 1-10 consists of an amendment to the Implementation Plan (IP) only.

As outlined in this staff report, the proposed Implementation Plan amendment as submitted could potentially result in impacts to tidelands/submerged lands, coastal-dependent/coastal-related development, visitor serving development, lower cost overnight accommodations/limited use overnight accommodations, transit/smart growth, public access and recreation, coastal resources protection and new development policies. However, if modified as suggested, the IP amendment is in conformity with and adequate to carry out the tidelands/submerged lands, coastal-dependent/coastal-related development, visitor serving development, lower cost overnight

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accommodations/limited use overnight accommodations, transit/smart growth, public access and recreation, coastal resources protection and new development policies of the certified LUP. Therefore, the Commission finds that approval of the Implementation Plan amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies City of Dana Point LCP amendment request 1-10 if modified as suggested herein.

## DANA POINT HARBOR REVITALIZATION PLAN DISTRICT REGULATIONS

All page references are to Exhibit 5, Full Text of the Suggested Modifications.

Language added as a result of the Commission's January 12, 2011 action is shown in ***bold, italic, double underline***. Language deleted as a result of the Commission's January 12, 2011 action is shown in ~~bold, double strike out~~.

### 1. Page 8, Chapter 3, General Regulations and Special Provisions, General Regulation 8. Community Character:

#### 8. Community Character

All new buildings in the Harbor shall be consistent with the character of the community in architectural form, bulk and height of the community, including other structures located ~~in the Coastal Zone boundary of the City of Dana Point~~ ***within one-half mile of the Dana Point Harbor LCP boundary***. New development within the Harbor shall provide a scale and setting for retail merchants and restaurants that encourages pedestrian opportunities through the use of widened sidewalks, outdoor plazas, promenades, courtyards and landscape design. Long, continuous row structures shall be avoided through the provision of open spaces, setbacks from public walkways, varied roof treatments, staggered and stepped-back exterior building facades and the incorporation of a variety of building designs, materials and colors.

### 2. Page 8, Chapter 3, General Regulation 9

9. **Application of Regulations**, Add the following at the end of this regulation:

***These provisions do not limit the authority of the California Coastal Commission to interpret any provision of the certified LCP through review, on appeal, of any decision of the City of Dana Point on a coastal development permit for development within OC Dana Point Harbor. All such decisions of the City of Dana Point are appealable to the California Coastal Commission.***

### 3. Page 21, Chapter 3, Special Provision 21, Tree Trimming Procedures for Harbor Bird Habitat, subsection b),

b) In the event that a tree providing habitat for the above species is identified as causing a danger to public health and safety by OC Dana Point Harbor and is removed, mitigation at a ~~1~~ **2**:1 ratio shall be required. ***Any trees removed on or***

Exhibit #1  
Page 1 of 5

before January 12, 2011 that provided habitat for the above species shall be mitigated at a 2:1 (two trees replaced for every one tree removed) within the Harbor. Eucalyptus trees shall not be used as replacement trees. Replacement trees shall be . . . .

**4. Page 28, Chapter 4, Marine Services Commercial, Planning Area 1, Section 4.2 Principal and Other Permitted Uses, Section 4.2c):**

- c) Facilities and structures providing for the maintenance and operation of a boat repair yard limited to the alteration, maintenance and repair of the hulls, rigging, sails, engines, ~~and~~ accessories and boat-owner self-repair area.

**5. Page 28, Chapter 4, Marine Services Commercial, Planning Area 1, Section 4.2 Principal and Other Permitted Uses, modify Section d 4.2e):**

- e) Dry boat storage and maintenance facilities, including boater lounge area and other boat maintenance and support facilities and boat-owner self-repair area.

**6. Page 33, Chapter 4, Marine Services Commercial, Planning Area 1, Section 4.5 p) Development Standards and Requirements:**

- p) Ship Yard: A shipyard shall be maintained in the Marine Services Commercial Planning Area and shall be no less than 1.6 acres in size. The expansion, modification or renewal of the shipyard lease shall be required to demonstrate that the proposed size of the lease area is adequate to maintain a full-service shipyard facility that includes boat haul-out and repair services. Boat-owner self-repair areas are encouraged.

**7. Page 35, Chapter 4, Marine Services Commercial, Planning Area 1, Section 4.5 Development Standards and Requirements, add new subsection w):**

w) Boat-owner self-repair area: As part of any redesign and/or significant new development within the Marine Services Commercial Planning Area (PA 1) an area shall be provided for boat owners to maintain their own vessels in compliance with all applicable regulations pertaining to self-maintenance activities. The boat-owner self-repair area shall be located in proximity to the shipyard or dry boat storage facilities where access and support facilities are available.

**8. Page 39, Chapter 5, Day Use Commercial, Planning Area 2, Section 5.5 (c)  
Development Standards and Requirements:**

4. *With the exception of Conceptual Building 4 (the new building proposed in the Dana Wharf area), ~~The the~~* additional height above the forty (40) foot height limit shall be for architectural features only that do not increase the gross floor area for the purpose of determining parking requirements.

**9. Page 39, Chapter 5, Day Use Commercial, Planning Area 2, Section 5.5(c)  
Development Standards and Requirements:**

5. No more than fifty percent (50%) of the total roof area of the structures shall exceed forty (40) feet in height and no more than twenty-five percent (25%) of the same roof area shall exceed fifty (50) feet in height. *An exception to this limitation may be permitted for Conceptual Building 4, (the new building proposed in the Dana Wharf area) with a building footprint of less than 5,000 sq. ft., if the majority of the upper level is used to accommodate a harbor-wide view for purposes of harbor-related public safety operations.*

**10. Page 75, Chapter 11, Education Basin, Planning Area 8, Section 11.5  
Development Standards and Requirements:**

- j) Anchorages: The existing amount of anchorage space shall be maintained and where feasible new anchorages shall be provided in other areas in the Harbor so long as the anchorage space minimizes interference with navigation channels and where shore access and support facilities are available. *Changes in anchorage space to provide new berthing or mooring space may be allowed, subject to a coastal development permit and other applicable regulatory review.*

**11. Page 80, Chapter 12, West and East Marinas, Planning Areas 9 and 10, 12.5  
Development Standards and Requirements:**

- j) Anchorages: The existing amount of anchorage space shall be maintained and where feasible new anchorages shall be provided in other areas in the Harbor so long as the anchorage space minimizes interference with navigation channels and where shore access and support facilities are available. *Changes in anchorage space to provide new berthing or mooring space may be allowed, subject to a coastal development permit and other applicable regulatory review.*

**12. Page 86, Chapter 13, Marine Services and Harbor Entrance, Planning Areas 11 and 12, 13.5 Development Standards and Requirements:**

- j) Anchorages: The existing amount of anchorage space shall be maintained and where feasible new anchorages shall be provided in other areas in the Harbor so long as the anchorage space minimizes interference with navigation channels and where shore access and support facilities are available. *Changes in anchorage space to provide new berthing or mooring space may be allowed, subject to a coastal development permit and other applicable regulatory review.*

**13. Page 97-98, Chapter 14, Off-Street Parking Standards and Regulations, Section 14.6 Parking Management Plan, add the following at the end of the second paragraph:**

The Dana Point Harbor Parking Management Plan will be updated on a routine basis (every 5 years) or as determined by the Director, OC Dana Point Harbor and/or the City of Dana Point Director of Community Development or as Coastal Development Permit application(s) are processed for Dana Point Harbor Revitalization Plan improvements that affect a significant number of parking spaces or utilization management of parking areas in the Harbor. *The Parking Management Plan shall also provide accurate (baseline) numbers for the number of slips in each area of the harbor, the number of dry boat storage spaces, and the number of parking spaces which currently exist, based on legal and permitted development. These baseline numbers shall be used in development of the parking management plan.*

**14. Page 110, Chapter 16, Discretionary Permits and Procedures, Section 16.3 Coastal Development Permits, delete the last sentence to make the provision internally consistent, given the modification in the first sentence:**

Coastal Development Permit applications for Planning Areas 1 through 7 ~~may~~ *shall* be processed in compliance with applicable requirements. ~~either as an application requiring a public hearing or an application requiring administrative approval.~~ When a public hearing is required, the application shall be heard by the City of Dana Point Planning Commission at a regularly scheduled meeting. ~~When a public hearing is not required, the City of Dana Point Director of Community Development shall determine the time and place for the approval action to be taken.~~

**15. Page 126, Chapter 17, Revitalization Plan and Statistical Table Regulations and Procedures, Section 17.4 c) Procedures for Revisions to the Dana Point Harbor Revitalization Plan and Statistical Table, make the following revisions in order to make the procedure consistent with changes made in the addendum in Section 17.2:**

- c) All Planning Area boundary lines and acreages identified on the Dana Point Harbor Revitalization Plan and Statistical Table are estimates based upon the current level of information and mapping. Refinements to the Planning Area boundaries/acreages are expected to occur with future project design and more detailed engineering and mapping. For this reason, in Planning Areas 1, 2 and 3, boundary lines and acreages shown on the Dana Point Harbor Revitalization Plan and Statistical Table may be refined up to 5 (five) percent for final street realignments, parking area reconfiguration, landscaping, geotechnical or other engineering-related reasons without ~~amendment~~ amending the body of these District Regulations, when more accurate information becomes available and is submitted with future Coastal Development Permits.

DPT-MAJ-1-10.IP Revised Findings.Exhibit 1

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HEARING  
1/12/11

## Boaters for Dana Point Harbor

### Proposed IP Wording Changes

#### 12.29.10 Staff Report

#### Section 11.5 - Development Standards and Requirements (Planning Area 8)

Exhibit #5, Page 78 of 138, Original Document Page II-11.4, the following paragraph is added in the staff report. Our recommend additional language is underlined.

j) Anchorages: The existing amount of anchorage space shall be maintained and where feasible new anchorages shall be provided in other areas in the Harbor so long as the anchorage space minimizes interference with navigation channels and where shore access and support facilities are available. Reductions in anchorage space to provide new berthing or mooring space are allowed, subject to a Coastal Development Permit.

This language also appears in Section 12.5j (Planning Areas 9 and 10, p. 84 of 138) and Section 13.5j (Planning Areas 11 and 12, p. 90 of 138) and should be changed there as well.

#### Section 14.6 - Parking Management Plan

Exhibit #5, Page 103 of 138, Original Document Page II-14.11, the following paragraph is added in the staff report. Our recommend additional language is underlined.

A Parking Management Plan shall be submitted with the first Coastal Development Permit for development of the Commercial Core area improvements and establish a baseline assessment of the current and future parking demands throughout the Harbor. The PMP shall take into account weekday, weekend and seasonal variations in the use of the Harbor facilities to make the best possible use of the parking, while prioritizing parking usage to avoid adverse impacts on designated boater parking and boat launch ramp parking areas, in addition to balancing parking area usage in such a way as to minimize overcrowding of high demand areas. The PMP shall also address specific compliance measures to implement the requirements included in the Southern California Air Quality Management District's Regulation XV of the Air Quality Management Plan, including transportation demand management

# HARBOR MASTERS AND PORT CAPTAINS

INCORPORATED

January 7, 2011

Teresa Henry, District Manager  
CA Coastal Commission  
200 Oceangate, 10<sup>th</sup> FL  
Long Beach, CA 90802-4416

Re: Dana Point Harbor Local Coastal Program Amendment Implementation Plan (Item 8b)  
Support amended pump-out language  
Support for LCPA Implementation Plan item 8b

Ms. Henry-

I am writing on behalf of the California Association of Harbor Masters and Port Captains (CAHMPMC) supporting comments made by Brad Gross of Dana Point Harbor in response to the proposal to require marinas to install pump-outs in every slip in their facilities.

CAHMPMC is a 63 year old, non-profit membership organization representing marinas and marina operators across the State of California. In this capacity we are well versed in activities of boaters and of marina operations and would like our comments included with Brad's on the above issue.

Our members report that, it is very rare that a marina has a line of boaters waiting for a turn at the pump-out station. More often, pump-outs have been situated thoughtfully in California facilities and rarely experience the problem of not being able to access a unit when needed. A recent survey by the US Fish and Wildlife Service cited that on average boaters spend just nine days on the water (from *Casting Beyond the Bow: An Examination of Anglers Fishing From Boats 2006*). These boaters are generally out for a day trip. Such use of a vessel does not produce the volume of on-board sewage that would necessitate a pump-out in every slip for proper disposal. Furthermore, as Mr. Gross explained about vessel size, the California Department of Boating and Waterways recommends dump stations for vessels 26' and less. Dana Point Harbor, with more than 75% of their vessels less than 30' is a prime facility for the inclusion of strategically placed dump stations.

Dana Point Harbor has been the recipient of the Clean Vessel Act grant program which provides funding for facilities to install pump-outs that are adequate, reasonably available, easily accessible and open reasonable hours. The goal of the CVA is to have pump-outs distributed throughout boating regions to minimize the potential of sewage being pumped overboard. As funding for this program is limited and because installing pump-outs to every slip is so much costlier than simply installing one or two pump-outs at a facility, the money would be spent in a much more limited area. One or two marinas could easily use all the funding that is available for the state in any given year. This would contrast to typical use of the grant monies in CA. In 2009 the grant funded 11 pump-outs, 3 pump-out vessels, 10 floating restrooms and 1 dump station. In past years, the figures for installations were about the same (information taken from the USFWS website). In addition, the cost burden to the marina that has to foot 25% of the cost of the pump-out under the grant match would be excessive.

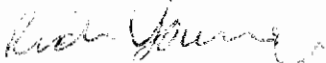
While we applaud the California Coastal Commission for its forward thinking in keeping sewage out of our waters, we feel the programs and processes in place for installation and use of pump-outs, and/or the recommendations by Mr. Gross in his letter as they concern Dana Point Harbor

Exhibit #3  
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are adequate for handling the volume of waste that boaters produce. Boaters are becoming more and more aware of the pollutants their recreational choice can carry if they are not responsible, and more than likely, even if there was a line, a boater would choose to use a pump-out instead of dumping into the same waters they fish, swim and boat in.

Finally, and in reference to the upcoming hearing for the Dana Point Harbor Local Coastal Program Amendment Implementation Plan (Item 8b) scheduled before your Commission for Wednesday January 12, 2011, we at CAHMPC fully support the project and look forward to, an encourage your Commission to pass the item.

Respectfully submitted,



Richard Young, President

California Associating of Harbor Masters and Port Captains.

Wed 8b

### **Building Height Exceptions (General)**

The certified Land Use Plan allows for exceptions to the 35' building height limit if certain specific criteria are met. This applies only to Planning Area 1 for the dry stack boat storage building (a priority use), Planning Area 3 for the lower cost overnight accommodations visitor serving hotel (also a priority use) and in Planning Area 2 for the Day Use Commercial uses, but only for specific buildings. In Planning Area 2, seven (7) criteria must all be met for an exception to be allowed. These criteria are listed in the Implementation Plan Chapter 5, Section 5.5.c). Criteria #3 limits the exception to the buildings that are "*connected to the parking deck podium structure used to create direct vehicular and pedestrian access to the Day Use Commercial amenities, with additional unobstructed views of the ocean and marinas provided from new elevated public vantage points*". This effectively limits the number of buildings that can receive an exception to the building height limit in Planning Area 2.

### **Building Height Exception for Planning Area 2 (Harbor Administration Building # 4)**

OC DPH is requesting a revision to a suggested modification in Chapter 5, Development Standard 5.5c-5 to allow for buildings with a footprint of less than 5,000 sq. ft. not to be required to limit total roof area for the following reasons:

- Any exception to the building height standards will be required to demonstrate conformance with all architectural and community character design requirements as part of a CDP application (no guarantee the maximum building height will be approved);
- The intended uses of the referenced smaller building are different than the other 3 Commercial Core buildings (restaurants on the top floor and merchants and other day uses on the lower level), consisting primarily of Harbor management-related administrative offices (i.e., yacht brokers, boat rental businesses, marina operator, OC DPH and/or Harbor Patrol) on the 2 upper floors and commercial business on the ground level;
- Design of the building can provide a publically accessible view area or deck that is presently not available anywhere in the Harbor and thereby specifically implementing Coastal Act Policies for the provision of enhanced coastal access and provide viewpoint opportunities;
- The location and height of the proposed building may provide the County Harbor management team with unobstructed views of the boat launch ramp, dry boat storage, public areas such as the festival plaza, east and west marinas, anchorage areas, Harbor channel and entrance areas, thereby enhancing public safety and Harbor operations;
- Having all Harbor management functions potentially located in close proximity to each other enhances communication and access to individual resources;
- The proposed location of the smaller building immediately adjacent to existing structures in the wharf area of the Harbor does not impact public views (existing buildings to remain presently obstruct water views);
- All Commercial Core area buildings in Planning Area 2 that are eligible for consideration from the 35-foot building height restrictions must be directly connected to the podium structure, thereby providing continuous upper and lower pedestrian access from the parking deck (5.5c-3);
- Public/boater access and providing parking to higher priority uses shall be provided before other uses can be considered.