



February 8, 2010

Mr. Nicholas Chrisos  
County Council  
County of Orange  
P.O. Box 1379  
10 Civic Center Plaza  
Santa Ana, CA 92702

Dear Mr. Chrisos:

We at the Dana Point Boaters Association would like to bring to your attention an issue that requires your immediate attention; that of the illegal misdirection of funds from the Dana Point Tidelands Trust for purposes of reimbursement of OC Harbor Patrol funding.

While we support the purposes and practices of the OC Harbor Patrol, utilizing the Dana Point Tidelands Trust as the funding mechanism is contrary to established law, and over allocates the burden of its cost upon the boaters and merchants of Dana Point Harbor. For reasons enumerated below, we respectfully request that the funds misdirected be returned to the Trust, and the costs be borne by the County General Fund, as has properly been done in prior years.

1. The OC Harbor Patrol operating unit with offices in Dana Point is responsible for approximately 42 square miles of ocean area outside Dana Point Harbor, aka The Dana Point Tidelands Trust.

Jurisdiction runs from half way to Oceanside Harbor (7 miles) to halfway to Newport Beach Harbor (7 miles) and out 3 miles. This area outside of the Harbor represents a majority allocation of Harbor Patrol attention and costs. Indeed, were this not an operational requirement, were the harbor itself the exclusive focus, the department would be configured much differently at a fraction of the current cost. (No need for ocean going watercraft to cite just one obvious and expensive example.)

2. OC Harbor Patrol is responsible for all forms of emergency and non emergency public safety within the 42 square miles outside the Dana Point Harbor. Any boat local or otherwise, in transit within this area, falls within their jurisdiction.
3. OC Harbor Patrol is also responsible for regional enforcement of drug laws, immigration laws and homeland security mandates.
4. OC Harbor Patrol is an entity reporting to the OC Sherriff Department. The OC Sherriff Department's website cites the following mission of the Harbor Patrol, "*The Harbor Patrol/Marine Operations Bureau provides around-the-clock law enforcement, marine fire fighting and search/rescue services along the 48 miles of Orange County coastline...*". This indicates a mission that benefits all of the residents of Orange County.

5. There exists case law precedent, namely (*134 Cal. App. 3d 20; 184 Cal. Rptr. 423; 1982 Cal. App. LEXIS 1832*), attached, where the State Lands Commission successfully upheld the notion that Dana Point Tidelands Trust funds could not be circumvented by The County for purposes that serve interests outside of The Harbor, such as lifeguard services. We fail to see the distinction between the salient facts of that case and the case at hand.

We believe that the County has clearly violated the law with respect to the misdirection of approximately 3.7 million dollars in Dana Point Tidelands Trust funds during the fiscal year period 2009-2010. Further, this violation has created a significant hardship to Dana Point Harbor boaters and merchants who provided the funding for such reimbursement, through slip rents and other rental assessments that are meant to fund Harbor operations only.

We have included the State Lands Commission on distribution of this letter because they were the successful litigants in the previous ruling on this matter. We suggest both parties review the current circumstances. We request immediate restitution in the form of a complete rollback of the 3.7 million dollars being paid from the Dana Point Tidelands Trust to the Orange County General Fund. We also demand cessation of this practice.

We appreciate your immediate attention to this matter.

Respectfully,

Rodger Beard  
President  
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CC:

Curtis Fossum, Chief Counsel, California State Lands Commission  
Board of Directors, Dana Point Boaters Association

Attachments:

Case Law, 134 Cal. App. 3d 20; 184 Cal. Rptr. 423; 1982 Cal. App. LEXIS 1832