

Agenda Item

AGENDA S  RT

ASR Control 18-000637

MEETING DATE: 07/17/18
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Thomas Miller (714) 834-6019
 Stacy Blackwood (949) 923-3743

SUBJECT: Option and Lease Agreements for Dana Point Harbor

CEO CONCUR Concur	C. UNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: No **Current Year Cost:** See Financial Impact Statement **Annual Cost:** See Financial Impact Statement

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: See Financial Impact Statement

Funding Source: See Financial Impact Statement **County Audit in last 3 years:** No

Prior Board Action: 10/17/2017 #38, 01/31/2006 #25

RECOMMENDED ACTION(S):

1. Find that Final EIR No. 591, previously certified by the Board of Supervisors on January 31, 2006, reflects the independent judgment of the County of Orange and satisfies the requirements of CEQA for the lease being considered herein, which is a necessarily included element contemplated as part of the whole of the action.
 - a. The circumstances of the project are substantially the same as described in EIR No. 591 which adequately addressed the impacts of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken, and no new information of substantial importance to the project which was not known or could not have been known when the previous EIR No. 591 was adopted has become known, and no further environmental review is required.
 - b. EIR No. 591 is adequate to satisfy the requirements of CEQA for the lease amendment.
 - c. All mitigation measures are fully enforceable pursuant to CEQA (Public Resources Code) Section 21081.6(b) and have either been adopted as conditions, incorporated as part of the project design, or included in the procedures of project implementation.
2. Approve the Option Agreement with Dana Point Harbor Partners LLC, approve the Drystack Option Agreement with Dana Point Harbor Partners Drystack LLC, to conduct due diligence regarding master lease and development of Dana Point Harbor, and authorize the Chief Real Estate Officer or

designee to execute the option agreements in substantial conformance with the attached forms, with approval of County Counsel, for an up to 120-day option term for both options.

3. Approve the Ground Lease Agreement with Dana Point Harbor Partners LLC and the Drystack Lease Agreement with Dana Point Harbor Partners Drystack LLC for a 66-year term, to administer and manage Dana Point Harbor and initiate entitlement approvals for certain portions, and authorize the Chief Real Estate Officer or designee to execute the lease agreements in substantial conformance with the attached forms, with approval of County Counsel, to commence upon fulfillment of the conditions set forth in the option agreements.
4. Authorize the Chief Real Estate Officer or designee to sign any and all necessary documents related to the process of entitling Dana Point Harbor, as set out in the ground lease agreements, including minor modifications and amendments to the option agreements that do not materially alter the terms or financial obligations to the County, and perform all activities specified under the terms of the option and ground lease agreements.

SUMMARY:

Approval of the option and ground lease agreements will allow Dana Point Harbor Partners LLC and Dana Point Harbor Partners Drystack LLC to administer and manage Dana Point Harbor and initiate entitlement approvals for certain portions of Dana Point Harbor for the long-term use and enjoyment by the public.

BACKGROUND INFORMATION:

Dana Point Harbor (DPH) is a marine oriented facility located in the City of Dana Point (City) and owned by the County of Orange (County) in trust for the public as a small boat marina pursuant to a State Tidelands Grant (Tidelands Grant). DPH is bordered by the Pacific Ocean to the south, Dana Headlands and the Old Cove Marine Life Preserve to the west, Doheny State Beach to the east and a variety of commercial, hotel, residential, and public park uses to the north. DPH was created in 1968 from a natural cove along the shoreline as a small boat marina. In 1971, in cooperation with the Army Corps of Engineers, DPH's basic infrastructure and public facilities were constructed by the former Harbor Improvement District, which was succeeded by the Orange County Harbors, Beaches, and Parks Department, and later OC Parks.

The majority of the DPH facilities were constructed from 1971 through 1975. During the nearly five decades since that time, much of DPH's infrastructure has deteriorated or reached its useful life, and requires modernization and/or replacement. With the exception of the Dana Wharf buildings, routine maintenance and some minor improvements, the County has not remodeled or refurbished any of DPH facilities since the original construction was completed. Recognizing the need to revitalize DPH in 1997, the Board of Supervisors (Board) created the Dana Point Harbor Revitalization Task Force to assist with the development of a comprehensive plan for revitalization of DPH. The DPH Revitalization Plan was developed through extensive community outreach efforts, public hearings, agency reviews, and entitlement approvals. On January 31, 2006, the Board adopted Resolution No. 06-014 approving the DPH Revitalization Plan containing proposed improvements to the commercial core, hotel, marinas, and parking facilities. In 2016, the City approved the County's Coastal Development Permit for the Commercial Core Project which was anticipated to include construction of a new parking structure (adding 545 parking spaces); and seven new replacement commercial buildings (adding 30,000 square feet); and rehabilitation of five existing commercial buildings.

With various approvals in place to implement the DPH Revitalization Plan, in late 2015, your Board assessed the available options for project delivery, including a public project and public private partnership (P3) structures. Your Board took into consideration various factors, including the County's ability to finance and the possible need to subsidize the Project, the probable outcomes of the County re-designing the scope of the Project, and the needs of DPH tenants, boaters and visitors. A P3 structure was selected as the preferred development structure

because a P3 partner can construct, lease and manage the Project more cost-effectively and efficiently than the County due to greater knowledge and experience. Allowing a competent private real estate firm to appropriately size, finance, construct, lease and manage the project will help ensure the timely commencement and completion of the project's development and generate consistent revenue to the County.

Following the Board's direction to pursue a P3 structure, in 2016 CEO/Real Estate and the former OC Dana Point Harbor Department (now a division of OC Community Services/OC Parks) embarked on a two-step solicitation process to select a real estate development team to revitalize, operate, and manage certain portions of DPH for the long-term use and enjoyment of the public pursuant to a master lease or leases with the County. The first step was the release of a Request for Qualifications (RFQ), followed by the release of a Request for Proposals (RFP) to the pre-qualified proposers. The solicitation contemplated the successful proposer entering into an option and ground lease with the County to manage DPH and the revitalization process. The solicitation anticipated that the successful proposer would complete the revitalization in compliance with the DPH Revitalization Plan and related Final EIR and the City's Local Coastal Program. Any changes to these would require further County approval, in addition to approvals by the City and the California Coastal Commission.

On March 16, 2016, the RFQ seeking Statements of Qualifications (SOQs) from real estate development teams was released. On June 20, 2016, the County received three SOQs in response to the RFQ. A five-member evaluation committee comprised of public and private sector subject matter experts in areas including real estate development, finance, marina/coastal facility operations/management, and local government reviewed and rated the SOQs. Based on the criteria set forth in the RFQ, and on the information provided in the SOQs and obtained in interviews with each proposer, the panel recommended that each SOQ proposer be invited to participate in the RFP.

On October 19, 2016, the RFP was released to three pre-qualified proposers. On May 4, 2017, the County received two proposals in response to the RFP. Another highly qualified five-member evaluation committee reviewed and rated the proposals and conducted the interview process. Proposers were asked to provide supplemental information related to the proposed development team, development program, entitlements, financial capability, financial offer, and management structure. The evaluation committee carefully considered the information provided by each proposer, including the interview responses. Based upon the evaluation and selection criteria set forth in the RFP, the evaluation committee recommended Dana Point Harbor Partners LLC (DPHP) as the primary and Dana Point Partners (DPP) as the alternate for the lease and development of certain portions of DPH. On October 17, 2017, your Board selected DPHP as the primary and DPP as the alternate developer for the project, authorized the Chief Real Estate Officer to negotiate option and lease agreements with DPHP and return to your Board for approval.

Option and Lease Agreements:

Although the P3 solicitation process contemplated the execution of a single master lease and option agreement between the County and the winning proposer, during negotiations it became clear that a second lease and option should be established. The four agreements (Attachments B through E) include:

- Drystack Area Option
- Drystack Area Lease
- Option for DPH Master Lease excluding Drystack Area
- DPH Master Lease (excluding the Drystack Area)

Consistent with their original proposal, DPHP requested a \$20 million County contribution to the project but during negotiations requested the funding be applied to the drystack/boat storage component rather than the parking structure component, as originally contemplated. As the financial impact would be neutral to the County, it was agreed that the \$20 million would support the drystack/boat storage component, and that in order to provide for transparency and ease of tracking and reporting the use of County funds, a separate lease and option should be created. However, the Leases are cross-defaulted and must be optioned simultaneously, so as to ensure that the project functions as an integrated whole.

Option Agreements

As indicated above, the project includes two option agreements which will grant DPHP and Dana Point Harbor Partners Drystack LLC (DPHPD) the option to lease certain portions of DPH upon the terms and conditions set forth therein being satisfied. The first option agreement (Drystack Area Option) is an agreement between the County and DPHPD which grants DPHPD the option to lease the drystack area of the Dana Point Harbor premises, when the terms and conditions in the agreement are satisfied. The second option agreement (Option Agreement for DPH Master Lease) is an agreement between the County and DPHP which grants DPHP the option to lease the premises with the exclusion of the drystack area, when the terms and conditions in the agreement are satisfied. Each option agreement has a 90-day term and one 30-day extension. The option prices for the project are listed below:

OPTION PRICES	
Option Price for the Drystack Area	\$10,000
Option Extension Price for the Drystack Area	\$5,000
Option Price for Dana Point Harbor	\$20,000
Option Extension Price for Dana Point Harbor	\$10,000

Payment of each option price is due from DPHP and DPHPD upon execution of the corresponding option, is non-refundable, and will not be credited to rent payments.

DPHP and DPHPD may exercise their options upon satisfying the conditions set forth in their respective option agreement with the County. The tasks include submitting a conceptual plan, budget, construction, schedule, marketing plan, financial plan, and management plan. During the option periods, DPHP and DPHPD will conduct due diligence to determine the viability of developing and leasing portions of DPH for their intended purpose.

Lease Agreements

With your Board's support, Senate Bill 367 was passed on January 1, 2018, extending the statutorily authorized lease term established by the DPH Tidelands Grant from 55 to 66-years. Both the Drystack and DPH Master Leases will have a 66-year term. The development components of the project, inclusive of both leases, is outlined below.

Development Program (Project):

Commercial Retail Component – 116,727 Rentable SF (approximately)

- Restaurant and Outdoor Dining– 77,178 SF
- Retail and Market Hall/Food Court – 31,949 SF
- Marine Related Retail – 2,000 SF
- Office – 5,600 SF
- Surfing Museum – 9,000 SF

Marina/Dry Boat Storage Component

- Marina Slips - 2,296
- Drystack Boat Storage Facility – 388 spaces
- Valet boater slips (Located between the Commercial Core and Hotel)

Hotel Component

- Boutique Hotel- 130 rooms
- Affordable Hotel - 136 rooms

Commercial Core and Hotel Parking - 4,880

- Existing Parking to Remain – 2,377 spaces
- Proposed Parking – 2,503 spaces

Schedule

Approximate and subject to change based on due diligence performed during the Option Period
- Start Date: July 2018

- Entitlements: July 2018 – January 2019
- Construction: June 2019 – June 2025

Development Costs

DPHP plans to invest approximately **\$337,820,000** to plan, design, entitle, permit, construct, renovate, and reposition DPH. A breakdown of the initial approximate development costs for the Project per development component is provided below:

Development Costs per Development Component	
Marina	\$108,938,650
Dry Storage	\$19,492,075
Affordable Hotel	\$27,722,090
Boutique Hotel	\$90,626,750
Retail	\$91,043,222
Total Development Costs	\$337,822,787

DPHP will be obligated to maintain and renovate the improvements during the term of the lease to ensure the DPH cash flow and to protect the asset.

County Contributions

DPHPD will receive a contribution of up to \$20 million from Fund 108 for redevelopment work in the drystack/boat storage area per the terms and conditions of the Drystack Area Lease. The Drystack Area Lease includes the dry storage area (3.84 acres), day use boater's area (7.7 acres), and the associated boat wash station and slips.

Additionally, during the first year of the lease term for the Master Ground Lease Agreement for Dana Point Harbor, the County will forego up to \$500,000 in rent payments for all documented third-party costs and expenses incurred by DPHP to cure deferred maintenance and capital repair issues at the existing Marina Inn hotel. This will ensure that the existing hotel will remain safe, functional, and a consistent revenue-generator until DPHP secures permits to construct the proposed Affordable and Boutique Hotels on the same site.

Financial Terms:

Pursuant to the Tidelands Grant, all revenues generated within DPH are required to be used within DPH for its maintenance and operation and may not be used for other County non-Harbor uses. These revenues are deposited into the DPH Tidelands Fund (Fund 108) managed by the County, within the OC Parks budget.

Operation and Maintenance of DPH

Per the terms of the negotiated leases, DPHP and DPHPD will assume full responsibility for operation and maintenance of their lease premises (Attachment A), including several liabilities and operating functions for which the County would otherwise have responsibility including: dredging, seawall maintenance, pier and slip maintenance, Dana Cove Fishing Pier maintenance, pump-out replacement, buoys and navigational aids, derelict vessel abatement, tree maintenance, parking lot maintenance, and shelter, restroom and parkscape maintenance. Unless otherwise modified during the option period, the County will remain responsible for Harbor Patrol, and operation, maintenance, and rehabilitation of Baby Beach, OC Sailing and Events Center, Dana Cove Park, and other landscape, hardscape, and park amenities outside of the premises.

Over the 66-year lease period, using the current year budget as a baseline, it is projected that the overall operation, maintenance, and security costs of DPH (excluding revitalization and capital improvements) will total over \$1.6 billion. DPHP and DPHPD's assumption of the responsibilities listed above will reduce the County's financial obligations by 25%, or an estimated \$414 million. The remaining County operating costs for the same term will amount to \$1.2 billion, of which \$995 million is projected for Harbor Patrol.

Ground Rent

Over the 66-year Lease term, it is estimated that the total lease rent payment to the County will be approximately **\$717 million**. A breakdown of revenues by development component is provided below:

Projected Rent Per Development Component			
	Lease Year 1	Lease Years 1 through 25	Lease Years 1 through 66
Marina	\$1,642,000	\$60,513,000	\$345,600,000
Dry Storage	\$275,000	\$13,829,000	\$165,558,000
Affordable Hotel	\$198,000	\$6,614,000	\$78,987,000
Boutique Hotel	\$0	\$11,388,000	\$42,895,000
Retail	\$149,000	\$26,414,000	\$83,862,000
Total Rent	\$2,264,000	\$118,758,000	\$716,902,000

Compliance with CEQA: This project is a necessarily included element of the projects considered in Final EIR No. 591, certified by the Board on January 31, 2006, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes in the circumstances under which the project is being undertaken and no new information of substantial importance to the project which was not known or could not have been known when the Final EIR No. 591 was certified has become known therefore no further environmental review is required.

FINANCIAL IMPACT:

Approval of the leases is anticipated to provide revenue to the County of approximately \$717 million over the 66-year term. Additional revenue to the County of \$30,000 for the option payments is also anticipated, or \$45,000 should the option extensions be exercised. All revenues will be deposited into DPH Tideland Fund 108.

DPHP will also assume full responsibility for redevelopment and construction costs related to the DPH revitalization, in addition to an estimated 25% of future County operations and maintenance costs amounting to approximately \$414 million over the 66-year term of the leases.

Approval of the leases will also result in a contribution from Fund 108 to DPHP of up to \$20 million for redevelopment of the DPH drystack area, and a potential decrease in DPHP lease payments to the County of up to \$500,000 to cure any deferred maintenance or capital repair issues for the existing hotel.

Appropriations and revenues are not included in the Fiscal Year 2018-19 budget but can be absorbed within existing appropriations. In the event adjustments to the budget are needed, OC Parks will work with CEO Budget and return to your Board through the Quarterly Budget Report Process.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

OC Community Resources/OC Parks

ATTACHMENT(S):

- Attachment A – Premise Map
- Attachment B – Option Agreement for DPH Master Lease
- Attachment C – DPH Master Lease
- Attachment D – Drystack Area Option
- Attachment E – Drystack Area Lease
- Attachment F – Board Resolution No. 06-014
- Attachment G – Senate Bill 367
- Attachment I – Public Resources Code Section 21081.69(b)