

**~ DANA POINT HARBOR REVITALIZATION ~**  
**15 YEARS OF PLANNING: *WHAT HAS BEEN LEARNED?***



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## **SUMMARY**

Dana Point Harbor (DPH) is one of the most unique spots in Orange County, owned and operated by the County. DPH sits nestled between the beauty of Doheny State Park Beach and the rugged, historical Dana Point Headlands. The County is the trustee of this natural cove, which was legislatively granted as public-trust-lands status in 1961 located within the City of Dana Point.

The revitalization plan for DPH has been ongoing for fifteen years at an expense of millions of dollars, yet no construction has been started. There are contractual oversights in the initial agreements, the evaluations, the approvals, and subsequent amendments. There have been five amendments to the original project management agreement, which have extended time and expense to the County and taxpayers. The original agreement granted approval for the project management company to provide design development, permit acquisitions, and project management services, for the DPH revitalization plan at a cost of \$6,982,000, over a five-year term.

Delays have been attributed to the California Coastal Commission (CCC) for environmental revisions and responses to critics with special interests. Also, there exists a culture of *leave well enough alone* by some current and past County employees and officials that DPH should not be open to scrutiny or investigation. Perhaps this *'hands off'* perception can be attributed to *'District Prerogative,'* which affords cooperation among County Supervisors.

## **REASON FOR THE STUDY**

The Dana Point Harbor revitalization has been in the planning stages for the past fifteen years with construction yet to be commenced. There have been two Harbor directors, one project management company and multiple contract extensions costing millions. In addition, concerned citizens have made allegations which upon investigation have proven valid. There has been no update of *The Twelve Guiding Principles*, initiated in 1997 to include the economic changes over the past forty years.

The multiple extensions to the original project management agreement over the past eleven years are a source of major concern. The budget for the revitalization project has increased from \$6,982,000 approved for an initial five-year term in 2003, to the new *maximum financial obligation* of \$13,183,310, through June, 25, 2018. The actual cost is yet to be determined. Additional funds to complete the project are anticipated to be sought through bonds and/or loans. At this time, there is no visible sign of construction. There is also no plan to re-bid the project management agreement that has been in place since 2003. It has been an arduous task for the Grand Jury to identify and verify invoiced expenditures for the revitalization project relating to the project management company. The initial agreement was awarded to the lowest scoring applicant on the written portion of the evaluation. There was an erroneous attempt to change the

project management agreement to ‘*sole source*’ when the initial contract issued a Request for Proposal (RFP). There remain unanswered questions.

1. How is it possible to have the same project management company when a shovel of dirt has not been turned in over eleven years?
2. Can the revitalization project really be stymied by an individual or special interest group?
3. Is the current approach the most prudent and cost efficient method for completing the reconstruction project?
4. Does ‘*District Prerogative*’ violate or suggest an abdication to duty by the Board of Supervisors as it relates to the DPH revitalization project?
5. What are the real reasons for the delay?
6. Is the greater good being served?

There also appeared to be reticence among some County employees as well as a general reluctance to share information about Dana Point Harbor. This mind-set spurred an interest with the Grand Jury. DPH is an asset to be shared by *all* County residents and transient boaters, hence its future hinges on the safeguards of transparency to minimize failures and ensure a successful return on taxpayer monies.

The Grand Jury’s report will bring to light some of the challenges involved with revitalizing the Harbor.

## **BACKGROUND AND FACTS**

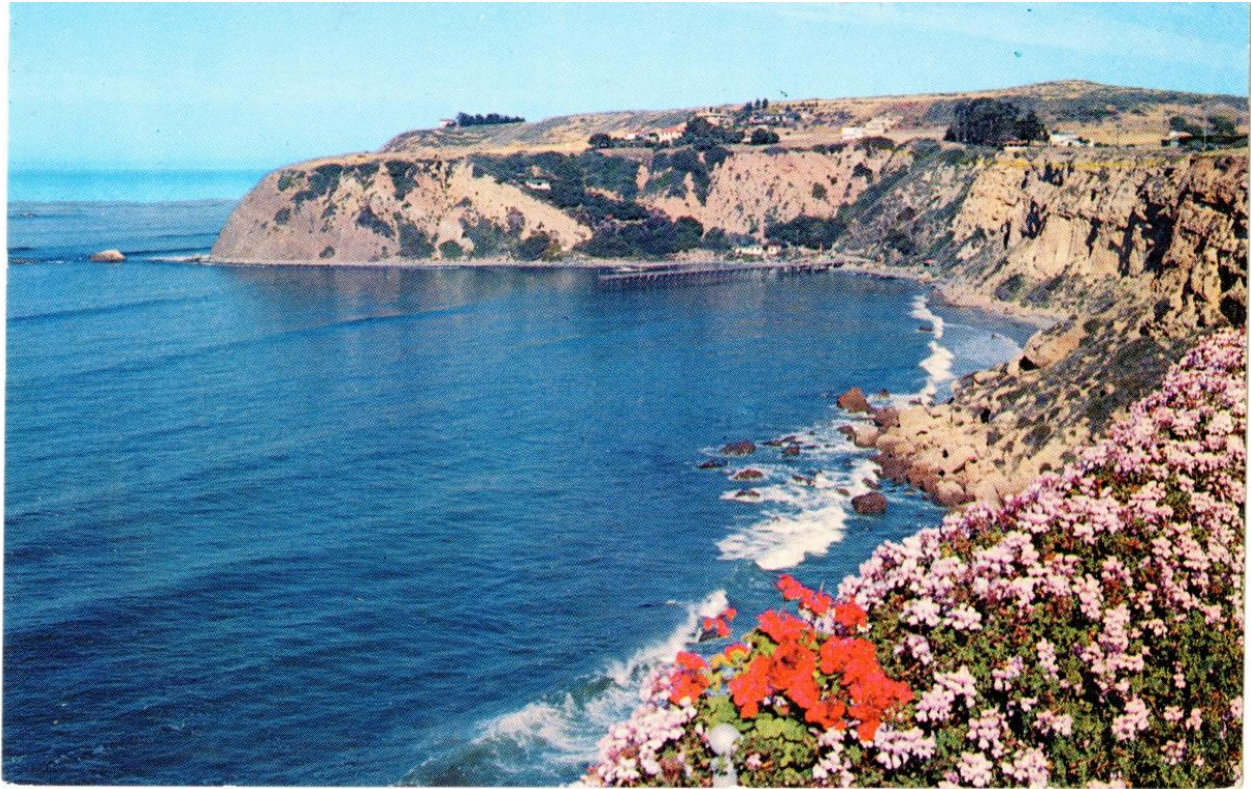
### **Overview of Dana Point Harbor**

The Dana Point Harbor is owned by the County and operated by Orange County Dana Point Harbor, which is located within the City of Dana Point. The Harbor covers 276.8 gross acres.<sup>1</sup> The Harbor was created as a small boat harbor in 1968, and opened to the public in 1971.

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<sup>1</sup> Orange County Archives: <http://ocarchives.com/>

**Fig 1.**



### **Harbor History**

Named after Captain Richard Henry Dana Jr., 1815-1882, (a Harvard trained lawyer, seaman, and author of *Two Years Before the Mast*, who sailed into southern Orange County aboard the *Pilgrim* in 1835), Dana Point sits nestled between the beauty of Doheny State Park Beach and the rugged historical Headlands that jut out into the Pacific Ocean.

The *Pilgrim* was a cowhide trading vessel commercially bound throughout the ports of southern California. The friars from the San Juan Capistrano Mission sold local hides to merchants. The cowhides were pitched over the cliffs of Dana Point to small waiting boats below, which then transported the hides to the *Pilgrim* anchored in the harbor. Seaman Dana documented his voyage and later penned the area once known as Capistrano Bay or Bahia Capistrano, as "...the only romantic spot on the coast."<sup>2</sup>

During the 1940's, 50's and 60's, pioneering board and body surfers also thought the high bluffs and sheltered coves of the area were the most beautiful spot on the California coast. Dana Point was also home to a very special wave that broke at the Dana Point cove. Affectionately dubbed Killer Dana, the wave rose up offshore from deep water and broke close to the rock-lined beach.

<sup>2</sup> Reference; Dana Point Harbor: <http://ocparks.com/beaches/dana/>

Killer Dana eventually met its doom when Harbor construction cut off the means to its legendary power. Despite Killer Dana's untimely end, its spirit inspired the advent of innovative approaches at local surf shops in the redesign of surfboards from wood to new contemporary foam materials that were much lighter and nimbler for surfers to handle.

### **History from United States Documents, State and County Agencies**

During the 1940's, the United States Congress recognized that safe harbors were needed along the California Coast. In 1961, The State of California granted via the Dana Point Tideland Trust, the area that would eventually become Dana Point Harbor to the County of Orange. The U.S. Army Corps of Engineers (ACOE) executed the design and construction of the Harbor.

In 1941, discussions began between the Federal Government and the State of California about a transfer of the future harbor area. During this period, State and Orange County officials discussed transfer of the future harbor property to the County. The Dana Point Harbor was authorized by Congress by way of the '*River and Harbor Act*,' approved March 2, 1945. Act of Congress, Public Law 14, Seventy-ninth Congress.<sup>3</sup> The Secretary of War authorized and directed preliminary examinations and surveys to be made at several localities, including the coast of California, with a view to the establishment of harbors for light-craft vessels. The scope of this survey included consideration of:

- a) a protected small-craft harbor for use by recreational and sport fishing craft and for use as a harbor-of-refuge, and
- b) the effects of that harbor on the adjacent shoreline. The plan under consideration involved protective breakwaters and dredged entrance and interior channels. The purpose of this study was to determine whether construction of a small-craft harbor at Dana Point was physically and economically feasible.

In 1949, the County approved a feasibility study for the development of the Harbor. In 1957, the Dana Point Harbor Project was incorporated into the California Coastal Harbor Program. In 1958, the United States Congress funded a survey report by the ACOE to begin development.

The California State Legislature granted most of the site to the County as part of the Tidelands Grant in 1961. As approved by the Governor, May 10, 1961, the State Legislature granted the County of Orange all the rights, title and interest held by the State. Grant requirements included:

- a) the proper use of the funds,
- b) improvements by the County (without expense to the state), and
- c) that the Harbor always remains available for public use for all purposes of commerce and navigation.

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<sup>3</sup> <http://www.fws.gov/habitatconservation/Omnibus/R&HA1962.pdf>

The County was given 10 years from 1961 to 1971 to finish substantial improvements without expense to the State. If the State Lands Commission determined that the county had failed to improve the lands as required, all rights, title, and interest of the county would cease and the lands revert and vest back to the State.

The County Board of Supervisors, acting for the County on April 17, 1962, adopted the above resolution, having considered various reports. The first phase of the development was to be completed within five years and full development within fifteen years. As of July 19, 1962, the Dana Point cove could not be classified as a Harbor according to the Chief of Engineers, Dept. of the Army. The present vessel traffic was negligible and recreational boating was described as nonexistent, despite numerous boat enthusiasts who desired berthing boats at the Harbor *if* protected facilities and necessary amenities were made available.

The ACOE issued the final general design for the Harbor in 1965. Construction began with a cofferdam built to keep out breakwaters. Installation of the pilings and docks created the outer island and the cove side of the Embarcadero area. As construction was completed, water was released from the cofferdam and allowed back into the basins. The first boats visited the ‘*new*’ Harbor in 1969.

The General Development Plan, the General Landscape Plan and the Harbor Improvement Plan, which were designed to regulate the development of Dana Point Harbor, were approved by the Orange County Planning Commission on May, 18, 1969 and adopted by Ordinance Number 2331 by the Board of Supervisors on July 22, 1969. Portions of import and clarification within the Plan included the Architectural Theme.

“The object of the design of any and all structures at Dana Point is to enhance the environment of the harbor by providing a unified and distinct Dana Point character, while meeting the needs of the lessee and providing the needed services to the public. The structures erected at DPH should reflect an atmosphere of warmth, informality and hospitality that has been a part of this area since the days of Spanish Ranchos and Yankee Sailing Ships. Rough, rugged, neutral materials with the touch of hand craftsmanship shall be reflected in all designs. Modern materials such as aluminum, plastics and enameled steels should be used in subdued restrained manner. Stress of design should be placed upon the use of natural materials whose beauty will be enhanced with age, materials upon which the action of sun, rain, and salt spray will improve a structure’s appearance. Buildings within Dana Point Harbor shall blend naturally into the setting of ocean vistas, sailing ships and landscaping.”<sup>4</sup>

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<sup>4</sup> Orange County Archives: <http://ocarchives.com/>

**Fig 2.**



### **The Dana Point Harbor Timeline**

- 1830: Captain Richard Henry Dana, Jr. sailed *The Pilgrim* into the cove, Capistrano Bay.
- 1850: California acquired un-granted tidelands upon admission to the United States.<sup>5</sup>
- 1940's, 50's and 60's: Board and body surfers' road the Killer Dana waves in Capistrano Bay.
- 1941: The U. S. Congress identified the cove as a "Safe Harbor."
- 1945: Dana Point Harbor was authorized by Congress by way of the "River and Harbor Act."
- 1949: The County approved a feasibility study for the development of Dana Point Harbor.
- 1957: Dana Point Harbor was incorporated into the California Coastal Harbor Program.
- 1958: The United States Congress funded a survey report by the U.S. Army Corps of Engineers.
- 1961: The State Legislature approved a feasibility study for development of the Harbor.
- 1961: The State Legislature granted most of the site to the County as part of the Tidelands Grant.
- 1962: The Harbor project received Congressional authorization under Public Law 87-874.
- 1965: ACOE issued the final design of the Harbor.
- 1969: The first boats visited the new Harbor.
- 1972: The California Coastal Commission was established by voter initiative (Prop 20).
- 1997: A Board of Supervisor's created the 23 member Task Force; DPH Revitalization Plan.
- 2003: A RFPs contract was awarded to the project management company effective until 2018.
- 2005: Board of Supervisors approved a stand-alone O.C. Dana Point Harbor Department.

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<sup>5</sup> <http://www.slc.ca.gov/>

## **Tideland Leases**

At the time Dana Point Harbor was first constructed, the Harbor was divided into a number of sub-areas that were subject to long-term lease agreements with the developers of the facilities located within each leasehold boundary. Presently, the County of Orange, controls all areas of the Harbor with the exception of the shipyard, Ocean Institute, DP Yacht Club and Nordhavn.

The County leases other properties throughout the Harbor to independent merchants, recreational services, equipment vendors, and restaurateur's. As is the case with all Harbor lease agreements, facilities are provided on a rental basis that also includes a profit sharing component that is based on a percentage of sales receipts.

## **Dana Point – County Tidelands Fund - 108**

The Tideland 108 Fund is financed by revenue derived from slip revenues through licensed agreements, retail leases and operating agreements of land improvements on or adjacent to state tidelands in the Harbor, granted in trust to the County. Under the operating agreements, the gross revenue generated from these parcels becomes assets of the Dana Point Tidelands Fund 108. The net result is increased revenue available to the tidelands fund for the long term renovations in progress as planned at the harbor. The Harbor is to be self-sustaining.

Upon its admission to the United States in 1850, the State Of California acquired ownership of all properties and previously un-granted tidelands. The State holds these lands for the benefit of all people of California. The State Lands Commission (SLC) has review responsibility for tidal and submerged lands legislatively granted in trust to local jurisdictions. All tidelands and submerged lands are subject to the Common Law Public Trust, which is the sovereign public right held by the State-delegated trustee for the benefit of all people.

Conveyance of the Harbor area by the SLC was subject to the following trusts and conditions; that the lands be used by the County and its successors only for the establishment, improvements and conduct of the harbor and for the promotion and accommodation for commerce and navigation, and for uses incidental. The lands would be improved by the County without expense to the State and would remain available for public use for all purposes of commerce and navigation. The County must adhere to the common law Public Trust Doctrine.

## **The Dana Point Harbor Revitalization Plan**

The construction of the Harbor began in the late 1960's. The Army Corps of Engineers built the 212 acre marina as the 60's transitioned into the 70's. It was built as a small boat harbor and has kept its small-town charm.

Recognizing that the physical conditions in the Harbor required comprehensive intervention, a Task Force was created by an Orange County Board of Supervisor in 1997 to assist with the development of a comprehensive plan for the Harbor's future. The Dana Point Harbor Revitalization Plan was developed over the next several years and officially adopted by the County Board of Supervisors and the Dana Point City Council in 2006.

The primary goals of the project were to revitalize Dana Point Harbor so it could continue to operate as a popular destination for boaters, local residents and tourists while maintaining the unique character of the Harbor. The project goals included implementation of Coastal Act Policies in conformance with the approved Harbor Revitalization Plan and Land Use Plan (LUP).

### *The Twelve Guiding Principles*

The ultimate goal for the Harbor was to create a vision which accommodates all interests and ensures the preservation of the character of this outstanding small-craft harbor.

The 12 Guiding Principles were approved unanimously by the Board of Supervisors per Minute Order 12/8/1998. The approved guide to the revitalization project is listed below.

1. Maintain the Harbor's current character and family atmosphere.
2. Renovate and maintain the Harbor's appearance.
3. Maintain a full-service harbor.
4. Prevent commercialization of the island.
5. Ensure the future of yacht clubs.
6. Provide better utilization of parking spaces.
7. Improve Harbor water quality.
8. Maintain an overall mix of land uses.
9. Provide more parking in the commercial area.
10. Preserve/enhance existing parkland, beach, and landscape buffers.
11. Address the balance between revenue-generating and non-revenue-generating land use.  
(The project must generate sufficient revenue to fund construction, operation and maintenance of proposed improvements.)
12. Provide additional public restroom and shower facilities near the docks.

The task force recognized that the 30 year old Dana Point Harbor was one of the County's most popular recreational facilities. Many of the Harbor's older facilities were in need of renovation. To ensure the Harbor's long term vitality and success, the Board directed that a Dana Point Harbor Revitalization Plan be developed. The Task Force members represented the various stakeholders in the Harbor, including Harbor lessees, boaters, yacht clubs, general recreation users, Dana Point residents, businesses, and the Dana Point City Council.

The Harbor Revitalization Draft Concept Plan that resulted from the Task Force's efforts was based upon the consensus of the Task Force Members. The Task Force stressed a strong desire to retain Dana Point Harbor's unique character and ambiance, but recognized the need to repair or replace ageing structures, update design standards and address critical parking and traffic circulation problems. The Harbor Revitalization Draft Plan was intended to serve as a framework for more detailed planning, negotiation of new leases and consideration of new Harbor projects.

Public Facilities Resource Department (PFRD) of Orange County developed a goal and objective plan per the Board's directive. The Harbor Revitalization Draft Concept Plan was developed with the objective to retain, expand, and add uses within the Harbor that would optimally yield lease revenues. Its goal was to achieve self-sufficiency in operating costs for the County's Dana Point Tidelands Fund, presently referred to as Fund 108. Harbor revenue needed to cover both ongoing maintenance and operations, including the Orange County Sheriffs' Harbor Patrol Department and the repair and or replacement of necessary infrastructure. Harbor, Beaches and Parks Department augmented the fund as needed to accomplish timely repairs and replacements until the Harbor became a separate entity. The objectives were to: a) develop a *Harbor Revitalization Plan* that would provide for the upgrading and modest expansion of existing use while ensuring adequate Harbor-wide parking through a combination of new parking facilities and a coordinated parking management program; b) obtain and secure leases that would generate market rate rents, sufficient capital investments and services; c) facilitate implementation of Harbor revitalization projects in a coordinated manner in order to minimize inconvenience to Harbor users.

#### *Revitalization Plan Oversight*

In April 2005, the Orange County Board of Supervisors unanimously approved the formation of the OC Dana Point Harbor as a stand-alone department to provide direct oversight for the Dana Point Revitalization Project, and to oversee Harbor operations.

The Harbor Mission Statement is "To provide coastal access, environmental stewardship, and a diverse regional recreational facility so all users and visitors may experience the unique Dana Point Harbor resource in a safe and enjoyable way."

By the year 2020, it is anticipated by the County that Dana Point Harbor will have re-emerged as a thriving recreational, boating and retail activity center. There will be a new commercial core, complementing Dana Wharf, with the planned Festival Plaza serving as a gathering place for boaters, shoppers, tourists, and transient boaters. OC Dana Point Harbor's primary mission is to make this vision a reality so Dana Point Harbor can continue as a vital economic and recreational facility for the public's enjoyment.

Dana Point Harbor is staffed with a Harbor Director supported by a team of 15 County employees. The team is comprised of Administrative Managers and support staff; an Executive Secretary, Deputy Director, Operations Manager, Engineering Manager, Budget Officer, Real Property Officer, Capital Projects Manager, Supervising Maintenance Inspector/Specialist, a Procurement Contract Specialist and a Staff Assistant. Since the Harbor is a small agency, it operates differently than OC Public Works, John Wayne Airport, or other large County agencies that may manage major projects.

When the Department was created in 2005, decentralization was considered to be an acceptable structure put in place to manage the day-to-day operations of the Harbor as well as the revitalization project. It was anticipated that the support and expertise to be received from the project management company would be enhanced beyond what would be available from the County staff. A cost saving was anticipated in the long run as well. The new arrangement allowed for continued focus on maritime related duties within the Harbor and oversight of the revitalization project. This arrangement was to ensure providing that all deadlines, schedules, budgets, and obligations were met by the project manager and the rest of the revitalization team.

### **DPH - Marina Management Companies**

Presently, under separate agreements, two marina companies operate within the Harbor; one in the East Basin and one in the West Basin. Each performs and offers identical services within their respective Basin.

These marina companies operate on County property. The East Basin manages approximately 1,400 slips with 8 boater service buildings and marina parking. West Basin manages approximately 980 slips with 6 boater service buildings and marina parking. Each is tasked with providing complete landside and water area property management services. Both report to and receive instruction from the DPH Management. In addition, the terms and conditions set forth in the individual operating agreements are bound by terms set out in the Tidelands Grant by the State of California to the County of Orange.<sup>6</sup>

### **Bonds/Loans/Budget**

The revitalization plan was to achieve self-sufficiency within the harbor through lease revenues. The intention of the revenue obtained was to increase the Tideland Fund 108 established in 2005 when the Harbor separated from Harbor, Beaches and Parks. The Harbor revenue/budget was to cover ongoing infrastructure maintenance and operations including the Orange County Sheriff's Harbor Patrol Department.

When the Harbor was developed in 1971, the Master Leases issued were written to benefit the lessee and not the County. Forty-year ground leases were granted. The County anticipated that because of the very low rent, the lease owners would maintain and upgrade the property as required. Instead, the lease owners deferred maintenance in order to increase their revenue. Several officials acknowledged that the land lease agreements would never allow for the rehabilitation of the Harbor since the lease contracts were written to benefit the lessee and *not* the County.

A county internal audit in 2000-2005 recommended that the ground leases become operating leases. The switch to the operating leases provided that the rents from the property would go directly into the Tideland Fund 108, *and*, the revenues from the Harbor would circulate within

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<sup>6</sup> Chapter 321, Statutes of 1961, State of California:  
[http://www.slc.ca.gov/Granted\\_Lands/G09\\_Orange/G09-00\\_County\\_of\\_Orange/S1961\\_Ch321%20.pdf](http://www.slc.ca.gov/Granted_Lands/G09_Orange/G09-00_County_of_Orange/S1961_Ch321%20.pdf)

the Harbor, thereby increasing the Tideland Fund 108. Construction milestones were built into all of the new contracts to bring leases and rents to market value with the clause entitled 'Independent Use,' which enables the County to evict a tenant in order to continue to maintain the Harbor as self-supporting.

Presently, there are multiple commercial vacancies within the Harbor which are thought to be due to the economic downturn. Lessees are being sought at current market value.

The Orange County Harbor Patrol (OCHP) is part of the Sheriff's Department and is funded through a separate contract with the County via the Tidelands Fund 108. The Harbor Patrol consists of two elements: Harbor Patrol and Boats slips which includes land and sea at Dana Point Harbor. The OCHP cost is approximately \$10.4 million annually for the coastline service. Thirty percent of that budget is funded by the general Tideland Fund, a portion of which comes from fund 108. There are two other funds, 405 and 106 that also contribute. The Harbor contributes \$4.1million to the Harbor Patrol for their services. The annual Harbor expense over the past 10 years averages \$9 million. The revitalization plan will not change the Sheriff's duties at the Harbor.

The Harbor's true fiscal budget for the fiscal year 2013-14 is \$24,760,000. The Harbor's reserve is \$5.8 million for 2013-14; total reserve balance is \$50,037,106. A total of \$19,685,937 was spent on the revitalization project from 2003 to present. Of that figure, \$9,427,703 has been paid to the project management company within that time span. The remaining costs are attributed to capital and operational expenses to maintain the Harbor which averages \$16.5 million per year since the inception of the revitalization project. The Grand Jury found all budgetary funding from 2003 to present appropriately allocated.

In 2005, the Harbor requested a low interest loan from the California Department of Waterways (CDBW) for \$45 million anticipated for renovation of the waterside docks and slips. DPH submitted a permit application to the California Coastal Commission (CCC) as required at the same time the loan was requested. The State approved \$24 million of this reimbursable loan. The funds for the approved \$24 million loan were not taken due to delays caused by the incomplete filing of the permit documents to the CCC. As well, the interest that would have accrued while waiting for permit approval from the CCC would not have been cost effective. The approved funds were held in a state reserve fund. It should be noted that the money must be spent prior to reimbursement from the CDWD. The funds may only be used for marina projects that must first be approved by CDBW. The Grand Jury was informed by Harbor staff, that re-application to the California Department of Waterways for funding, is a possibility once construction gets underway. *The Harbor requested the same project manager to oversee both the landside and waterside aspects of the revitalization project.* The Grand Jury disagrees with this anticipated arrangement due to longstanding contractual abnormality and unique construction requirements presented by the revitalization project.

## **METHOD OF STUDY**

The 2013-2014 Orange County Grand Jury conducted a confidential interview with the project management company and additional study methods include the following process.

### Reviewed and Studied:

1. Public documents from the Registrar of Voters
2. Documents from the County Clerk Recorder
3. Documents from the California Secretary of State
4. The California Coastal Zone Conservation Act of 1972-Proposition 20
5. The Tidelands Fund Act, 108
6. Dana Point Harbor Letter from the Secretary of the Army, March 2, 1945
7. Federal, State and County documents
8. The 2009 County of Orange Procurement Policy Study
9. The August 1998, Orange County Contract Policy Manual
10. The 2012 Orange County Contract Policy Manual
11. The 2013-2014 County of Orange Adopted Budget
12. The Dana Point Harbor Revitalization Plan
13. Audits prepared by the County Internal Audit Office
14. Dana Point Harbor Operating and Management Agreements
15. Samples of request for proposals (RFP) packages and A-E Contract Proposals
16. Multiple Minute Orders and Amendments prepared for Board of Supervisors meetings regarding the project management company contract for the revitalization project
17. Environmental Impact Report (EIR)
18. Final Environmental Impact Report (FEIR) 591

Conducted confidential interviews with former and current Orange County officials/employees and professional civil servants from the County's:

1. Assessor
2. Auditor-Controller
3. Board of Supervisors
4. Clerk Recorder
5. Executive Office
6. Human Resources Service
7. Internal Auditor
8. Performance Audit Director

9. Public Works
10. Registrar of Voters
11. Sherriff-Coroner
12. Dana Point Harbor

Conducted confidential interviews with Dana Point Harbor stakeholders:

1. Vendors and Merchants
2. Boaters and Slip Owners

Conducted confidential telephone interview with the following:

1. The California Coastal Commission (CCC)
2. The Secretary of State's Office
3. District 2 County Resident

The Grand Jury also attended multiple site tours within Dana Point Harbor.

## **ANALYSIS**

### **The Contract**

The original agreement/contract for the Harbor revitalization was awarded as a result of a Request For Proposals (RFP) solicitation process and established a time and material (T&M) agreement on March 25, 2003. The agreement was drafted and approved without the benefit of an *audit clause*. In 2006, through Board approval, the agreement was changed to a fixed monthly fee. This type of flat fee payment structure guaranteed regular payment to the project management company regardless of whether or not a task was completed. There was little incentive for the project management company to complete tasks in a timely manner since payment was guaranteed. The 'fixed fee' and the 'no audit clause' combined, resulted in a lack of monitoring tasks assigned to the project management company. The Grand Jury was given to understand that although the '*fixed fee*' structure was in compliance with County policy, this type of payment method for a major project *was unusual* and not the standard method of payment for a large development project.

The original 2003 agreement granted approval for the project management company to provide design development, permit acquisitions and project management services for the DPH revitalization plan at a cost of \$6,982,000 for five years.

Amendment 1 approved on July 19, 2005, increased the contract by \$600,000 and added fifteen months to the term of the contract. This was necessary for additional time to obtain permits for a project of this magnitude and complexity.

Amendment 2, approved June 27, 2006, increased the contract by \$900,000 due to scope creep<sup>7</sup> to include the waterside portion of the revitalization plan. The total at that time was \$8,482,000.

Amendment 3, approved June 2, 2009, extended the contract in order to complete the California Coastal Commission (CCC) process for the landside portion of the project as well as the Environmental Impact Report (EIR) for the waterside portion of the project. The project management company during this time agreed to reduce their rates by 6%.

Amendment 4, approved July 1, 2011, extended the contract for an additional year to June 25, 2012, because the project management company agreed to a fee reduction of 10%.

Amendment 5 ratified on April 16, 2013, extended the contract an additional five years for an additional \$4,411,310. This amendment included continued project management services consisting of: preparation and acquisition of all regulatory permits and approvals, design, and engineering and CCC compliance services for the waterside portion. Payment to the project management company was changed under amendment 5 from a *'fixed fee'* to a time and materials basis. The current new *maximum financial obligation* of \$13,183,310 is through June, 25, 2018. The project management company is slated to receive \$1 million annually to manage the Revitalization project. The initial contract was originally approved for \$7 million and scheduled to expire in 2008. The actual cost of the revitalization project has yet to be determined. However, the agreement continues with no *audit clause*, which is essential for monitoring the assigned tasks of the project management company and for the benefit of the County and taxpayers. After five extensions and eleven years the initial agreement/contract has not been re-solicited.

Although the contract for the project management company has been in effect since 2003, the Grand Jury has been unable to unearth the original bids and oral responses of the applicants to the Request For Proposals (RFP). Management staff confirmed there has not been a review of the RFP for the original contract. It is unclear why management staff did not see the importance of having knowledge about what attributes or expertise the chosen firm brought to the project or what tasks were initially designated. It appeared there was a disinterest concerning the missing documents which was of concern to the Grand Jury. DPH expressed complete satisfaction with all work produced to date by the project management company. High marks were given to the project manager's ability to interact with the DPH staff and stakeholders and shared that the project management company functioned as part of the Harbor staff.

DPH management monitors the weekly and assigned tasks of the project management company. In an effort to determine a documented timeline for the revitalization project, a critical pathway

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<sup>7</sup> [http://en.wikipedia.org/wiki/Scope\\_creep](http://en.wikipedia.org/wiki/Scope_creep)

and minutes of the weekly meetings were requested. The Grand Jury was advised that minutes of the weekly meetings are not recorded and/or documented. This being the case, no one can aptly ascertain what has transpired during any of the weekly meetings without any written documentation. Therefore, transparency is lost. The Grand Jury does not devalue a positive working relationship established between the project management firm and the County. Concern arises when transparency is lost regarding those interactions.

The Grand Jury was unable to verify prior references of the chosen applicant or review applicants' responses or determine the criteria used by the evaluators. The proposals included references on past performances; however, the evaluators did not evaluate the past performance submitted with the proposal. The selected company came in last on the written portion and first on the orals. Information shared with the Grand Jury confirmed that a Request For Proposals (RFP) was issued and 6-8 companies responded. Two companies, in addition to the company awarded the agreement, were due to be vetted. This did not occur. References of the company awarded the agreement were not verified prior to the signing of the contract in an effort to avoid appeals by those applicants not selected. These issues were of grave concern to the Grand Jury. However, references were supposed to eventually be verified for the chosen firm. The original (RFP) nor the responses to the original proposal could be located by DPH or within the County. The Grand Jury endeavored to evaluate the experience and competency of the chosen project management firm. No documents were located nor did any of the interviewees offer full disclosure of past experience.

The project management company awarded the contract was also unable to produce their original response to the RFP. Initial references for the project management company proffered in 2003 were unable to be verified by the Grand Jury. Assistance was sought from the Secretary of State for company verification. The State of California was unable to provide any information regarding the project management company's status as of 2003 when the initial agreement was signed.

Current references became available for the project management company in a letter dated June 18, 2012, from Orange County Community Resources. The project management company provided services for Orange County Parks' Repair and Restoration Program. During the firm's contract with Orange County Parks, it completed over 75 projects satisfactorily. It still remains curious how the evaluators awarded the initial contract, and by what factors elevated the lowest scoring applicant to the award winning position during the verbal presentation, known to some County employees as the '*Pepsodent Effect*.' The disappearance of the original responses of all applicants to the RFP remains an enigma. The Grand Jury was advised that generally, the County retention policy for contracts is 3 years on location. Then, the agency is able to move the documents to the warehouse for two years or up to ten years on complex contracts. However, if the contract is active, all documents relative to the active contract are required to be held on-site at the host agency. *The Grand Jury did not find this to be the case at Dana Point Harbor.*

**Fig 3.**



### **Invoice/Vendor Monitoring**

The Grand Jury found the Harbor to be well run with attention to detail. Stakeholders, vendors, and leaseholders shared mutual respect for Harbor staff. There is a genuine effort by DPH to monitor the daily details of the Harbor's appearance and ambience. The Grand Jury observed less acumen by DPH management concerning the administrative monitoring of the financial outlay for the project management company. Historically, invoices submitted by the project management company have been non-specific. When the Grand Jury had the opportunity to view invoices for financial outlay, they lacked easily understandable and standard tracking methods for deliverables.

The Grand Jury also found that invoices submitted by the project management company to the Harbor management staff lacked specificity. Although monitoring of the invoices has improved with the oversight of the County Auditor, the Grand Jury found there remains a lack of information on the submitted invoices. It is difficult to determine the specified assigned task, what portion of the task has been completed, *and* the anticipated date of completion. The ability to follow the assigned task from beginning to end for financial reimbursement was not easily determined. Submitted invoices reviewed by the Grand Jury that were monitored and submitted by O.C. Public Works to Harbor management indicated very detailed notations as described by standard invoicing procedures and practices followed by the County. The submitted invoices indicated job type, date of anticipated completion, percentages of what was completed at the time of submittal and what yet remained, as well as an up-to-minute projected cost to complete at the time the invoice was submitted. Harbor management staff was queried why this procedure was not being followed for the monthly invoices submitted to the executive staff office with regard to the completed tasks for the project management company. Management's response was that task completion for the project management company was difficult to monitor. The project management company's progress was/is determined by the tasks completed by the architectural and engineering (A&E) firm.

Progress monitoring of assigned tasks for the project management company is determined through weekly meetings and phone interaction. Harbor management assured the Grand Jury that work is being done and that the project management company is an extension of the Harbor staff. In short, specificity of the details for monitoring weekly tasks or short term goals were lacking for the project management company. *Therefore, it is not easily substantiated what has or has not been done relative to weekly task assignments without accurate documentation being kept for ongoing progress review. Appropriate monitoring of assigned tasks remains an integral fiduciary responsibility for DPH management.*

### **Sole Source**

There was an erroneous attempt by Harbor management staff to change the original contract to 'sole source,' also known as "no-bid-contract." This effectively allows for the project management company to be the only company with whom the County could legally interact. In addition, sole source infers the chosen vendor has expertise in a specialized area that is required for the completion of a particular task within the County that cannot be found through regular or normal outreach methods. Special forms must be completed in detail describing the task, the reason for the task, anticipated cost for the job, and verification of the chosen company's competence. The company is required to give evidence of their competency and how many professional years of expertise in the said work project being sought. The recommendation to award the selected entity must then be approved by the Board of Supervisors. The process differs from a RFP. A Request For Proposals cannot be altered to a sole source during the mid-term of the agreement.

Amendment 5, (mentioned earlier) that extended the contract an additional five years for \$4,411,310 with a financial obligation, of \$13,183,310 through June 25, 2018, was presented to the Board of Supervisors for approval as ‘*sole source.*’ This was in error. However, some viewed this error as an attempt to give the project management company free range at the expense of County taxpayers. *Sole source* would effectively allow for the project management company to be the only company with whom the County could legally interact and infers there is no other company with the required expertise available to complete the Revitalization project. There still remain questions of the firm’s contractual longevity. Five project extensions have accrued thus far with no re—bids over ten years. Knowledge of the type of contract signed and under which the current firm is working is the responsibility of the DPH staff and those ratifying the contract.

### **District Prerogative**

One hundred twenty five years ago Orange County was an agrarian society with 14,000 residents, about 2800 residents per district, with three incorporated cities and no paved roads. From the County’s inception, the Board of Supervisors established the practice of ‘District Prerogative,’ a practice that allows individual Supervisors total discretion on matters involving only their district.

Today, it is virtually impossible for a District Supervisor to interact with most of their constituents within an assigned district. The five County districts currently conduct more than \$3 billion in business related actions through contracting and procurement undertakings. The county population is now approximately 3,010,232, which breaks down into about 602,000 residents per district;<sup>8</sup> a far cry from the agrarian society of 125 years ago.

It was acknowledged to the Grand Jury that the practice of ‘*District Prerogative*’ exists and is a common practice. District Prerogative is the longstanding practice of following the dictates of the supervisor whose district has a major project. The reason a Board member engages in the practice is that it assures support of the other 4 Supervisors on subsequent issues/projects that may arise in their respective districts. Former and current City Council members and County Management alluded to DPH as the *poster child* of District Prerogative. This behavior can be viewed as misuse on projects that have County wide significance. The behavior may also be viewed as vote trading. By following the practice of ‘District Prerogative,’ some members of the Board might abdicate authority involving decisions relative to the Dana Point Harbor revitalization project, because an assumed greater understanding is deferred to whosoever is the presiding district supervisor.

Today there are approximately 3.1 million residents in Orange County and it is both impossible and impractical for a District Supervisor to interact with most of the constituents within an

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<sup>8</sup> United States Census Bureau, 2010: <http://www.census.gov/2010census/>

assigned district as compared to an agrarian society. *'District Prerogative'* has no place in Orange County governmental policy-making where critical decisions are made regarding the multi-million dollar Dana Point Harbor Revitalization Project. The continued use of *'District Prerogative'* creates huge transparency issues, and negates the validity and appropriateness in County governmental decision-making. All members of the Board should responsibly exercise their duty to the County at large. Several County and elected officials were critical of *'District Prerogative'* and shared that there are few issues that are brought before the Board of Supervisors that only affect one district and its residents. "The Coast belongs to the People of the State of California."<sup>9</sup> The Grand Jury suggests that the practice of *'District Prerogative'* today by the Board of Supervisors does not serve the public when the Board automatically defers to the wishes of another district member. The Grand Jury advocates for the practice of *'District Prerogative'* to be discontinued because it hinders the progress of the revitalization project.

## **Reasons for Delay**

### *Bureaucratic Procedures/Detractors*

The 12 Guiding Principles set the criteria for the Harbor Revitalization making it difficult to rehabilitate the Harbor. Of primary importance is that the Harbor is to remain an affordable entity for *all* County residents. There is to be no commercialization of Dana Island. Therefore, measures that would or could increase revenue such as parking fees are stymied. The hotel cannot foresee becoming a five star hotel, because of the constraints of the CCC. The CCC determined that the hotel must remain a low cost visitor serving accommodations per the Tidal Zone Policy. This presents a challenge in planning and implementing the revitalization project owing to the fact there are very different and changing needs of the stakeholders.

The Grand Jury has no authority over the California Coastal Commission, (CCC). However, several attempts were made to include their expertise regarding the Harbor revitalization delay to no avail. Several conversations were had with CCC counsel who advised "the employees at California Coastal Commission are unwilling to speak with the Grand Jury due to "institutional discomfort."<sup>10</sup> In addition, CCC staff must adhere to monthly timelines of compiling data for various meeting and hearings. All information submitted to the CCC for or against a project must be researched prior to a decision being made. A single individual concerned with a project may voice dissent thereby halting the process until the objectionable concern is validated or deemed inconsequential. The Grand Jury was unable to obtain direct phone numbers for individuals handling Dana Point Harbor document submittals from CCC counsel.

The Environmental Impact Report (EIR), several technical documents, and the Local Coastal Plan (LCP) amendment were submitted to the CCC. The CCC responded as follows:

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<sup>9</sup> <http://www.coastal.ca.gov/legal/proposition-20.pdf>

<sup>10</sup> Interview: Counsel of California Coastal Commission

“Due to the quantity of information received and the limited amount of time allotted by the CCR §13553 for review of the submittal, Commission staff have not reviewed the EIR and technical documents in detail at this time. As Commission staff continues to review the submittal, additional questions may be raised regarding the EIR and technical documents as well as other elements of the submittal. Please anticipate additional questions and requests for information as our review progresses. An amendment to the City’s certified LUP and IP is ninety days from the date of submittal is deemed complete. However, if more time is needed for our staffs to work together, the Commission may extend the ninety day time period for up to an additional year.”<sup>11</sup>

Development within the coastal zone may not commence until a Coastal Development Permit (CDP) has been issued by either the Commission of a local government that has a Commission-certified local coastal program or the CCC. After certification of the Local Coastal Plan (LCP), Coastal development permit authority is delegated to the appropriate local government. The CCC retains original permit jurisdiction over certain specified lands, such as tidelands and public trust lands. To that end, the initial 3 tiered parking structure was voted out by the CCC due to citizen complaints of view obstruction. Instead, it was changed to a 2 tiered parking structure with 500 additional parking spaces. At this writing, the CDP has been approved by the City of Dana Point Planning Commission and is awaiting closure of the appeal process. The CDP would then go to the CCC for approval.

### *Boaters*

Some boaters are disgruntled that the landside of the renovation project is being expanded and the boat slips are being reduced. Per the CCC, there are more 25-foot boats than 50-foot boats moored at the Harbor, so the decision was made to err on the side of economical boating in favor of smaller boats. Accordingly, there is an anticipated boat slip loss of 155 to accommodate disabled persons having access to all docks per the Americans with Disability Act, (ADA). Of course, boaters would prefer zero boat slip loss; however, the anticipated boat slips reduction provides equality for all residents and taxpayers.

There are questions whether funds are available for the upgrade of the docks and proposed waterway infrastructure, which remains in its original state. Restroom facilities are too far from the boat slips. One boater expressed the revitalization project succinctly – ‘*inequality*’ – the notion that all stakeholders should lose and/or gain together for impartiality. The reality is that the waterside design is unable to be expanded because the surface area of the water cannot be changed.

Boat slip fees at Dana Point Harbor are higher than Oceanside, San Diego and Alameda, Los Angeles Marinas. However, those marinas and the amenities they offer are very different and do

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<sup>11</sup> Communiqué from the California Coastal Commission to City of Dana Point; February 14, 2007

not compare to DPH. Neither marina enlists the services of the Sheriff's Harbor Patrol. Slip fees at DPH were standardized for all boats of the same size two years ago. A gradual increase in boat slip fees is anticipated to keep pace with the market rates for boat slips which in turn will increase the reserves for the revitalization project.

## **FINDINGS**

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Dana Point Harbor Revitalization Project in Orange County, the 2013-2014 Orange County Grand Jury has arrived at 10 principal findings, as follows:

Penal Code Sections 933 and 933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments of local agencies and their non-elected department heads.

**F.1.** The original and current contract for the project management company has been extended five times since March 2003 without an audit clause.

**F.2.** The references for the final chosen three applicants responding to the original request for proposal, (RFP) were not verified.

**F.3.** When the evaluations were done of the three competitors, the selected company came in last on the weighted written portion, but first on the orals. The proposals included references on past performances however; the evaluators did not evaluate the past performance submitted with the proposal. The original references by the selected project management company could not be produced.

**F.4.** The original responses to the initial 'Request For Proposals' (RFP), have been unable to be found by Dana Point Harbor or the County Executive Office staff.

**F.5.** Amendment #5, April, 2013 to the original contract for the project management company was incorrectly labeled and submitted to the Board of Supervisor for ratification as a 'Sole Source' contract although this was subsequently corrected.

**F.6.** The Contract Policy Manual does not contain well written examples of 'sole source' justification.

**F.7.** Historical invoices submitted by the project management company lack specificity. Although monitoring of the invoices have improved with the oversight of the County Internal Auditor, the Grand Jury found that there remains a lack of information on the submitted invoices

to determine the specified task, the portion of the task completed, or the anticipated date of completion. The ability to follow the assigned task from beginning to completion with the financial allotment/award is not easily determined.

**F.8.** Standardized minutes of the weekly meetings held with Harbor Management, the project management company, various vendors, and lease holders associated within the Harbor, are not documented.

**F.9.** There are two managerial marine companies in the Harbor which duplicate services for boaters and operate under two separate County agreements; the East Marian and the West Marina.

**F.10.** Oversight for the Revitalization Project is lacking especially in the areas of:

- a) no audit clause in the original contract
- b) invoice non specificity (document does not track deliverables)
- c) sole source error to the original contract

## **RECOMMENDATIONS**

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Dana Point Harbor Revitalization Project in Orange County, the 2013-2014 Orange County Grand Jury makes the following 9 recommendations:

**R.1.** The CEO should assign OCPWD to oversee the construction phases of the Dana Point Harbor revitalization project. **(F.1. through F.5. and F.10.)**

**R.2.** The CEO should reduce the current time and material agreement for the project management company in cost and scope via specificity of tasks and deliverables, particularly in the area of design and construction management. **(F.1.,F7.,F10)**

**R.3.** The CEO should establish and direct that all construction competition guidelines for major construction agreements follow the current County Policy Contract Manual. **(F.2., F.3.,)**

**R.4.** The Board of Supervisors and the CEO should carefully monitor all major agreements and the implementation of the terms on a continuing basis during the term of the contract. **(F.1.) (F.4., F.5., F.10.)**

**R.5.** The CEO should amend the County Policy Contract Manual to include a clear and concise guideline for 'sole source' justification. **(F.6.)**

**R.6.** The CEO should require Dana Point Harbor to follow the OCPWD standard procedure for monitoring invoice submittal. **(F.7.)**

**R.7.** The CEO and the Dana Point Harbor Director should record and keep on file complete standardized minutes of all meetings with the various contractors and agencies with whom they regularly meet. **(F.8.)**

**R.8.** The CEO and the Dana Point Harbor Director should do a cost analysis for the efficiency of operating two marina management companies under two separate operating agreements with the County that duplicate services for boaters. **(F.9.)**

**R.9.** The CEO should conduct a financial audit of the Dana Point Harbor. **(F.7., F.8., F.9., F.10.)**

### **REQUIRED RESPONSES**

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses to Findings **F.1.** through **F.10.** are requested from the CEO.

Responses to Findings **F.8.** and **F.9.** are requested from the Dana Point Harbor Director

Responses to Recommendations **R.1.** through **R.9.** are requested from the CEO

Response to Recommendation **R.4.** is required from the Orange County Board of Supervisors

## **APPENDICES**

## APPENDIX A – A Visit to the Harbor

The Harbor offers specialty shopping, fishing and whale watching excursions, kayaking, Catalina transportation, and a variety of restaurants from coffee shops to fine waterfront dining. Across the bridge to Dana Island are more walking paths that lead to yacht clubs, a restaurant and a continuation of quiet waterside parkways. The Harbor provides slips and dry boat storage for over 2,500 boats along with many specialty shops. Particularly noteworthy is the unique promontory known as the “Headlands” which overlooks the Harbor.

Starting at the west end of Dana Point Harbor Drive is the Ocean Institute housed in a structure used for the education of county youth about marine science and maritime history. Next is Baby Beach, which offers tables and grassed park areas and a swim beach area. The DPH office is located adjacent to the entry of the Island Way Bridge. Further east is Dana Point Marina Inn, a 212 room hotel operated by Great Western Hotel Corporation. This hotel strives to achieve a three star status while adhering to the guidelines established by the CCC policy. Adjoining the hotel is a commercial zone consisting of free parking and eateries.

**Fig 4. Aerial Legend of Dana Point Harbor**



Beyond the commercial zone lies Dana Wharf sport fishing and whale watching. East of the wharf is a boat launch and a day-boater parking area. Looking east is Embarcadero Marina, a ten lane launch ramp and dry boat storage. The landside portion ends at Puerto Place, which abuts Doheny State Beach. Water side west of Dana Point Marina Inn is Island Way Bridge, which ends at Dana Drive. At the east end is the Sheriff's Harbor Patrol, which patrols the entire Harbor three miles into the Pacific Ocean. Going west on the strand along Dana Drive are yacht clubs, yacht and ship brokers, sailing clubs, and adjacent to the outer channel are picnic areas.

## **APPENDIX B – Governance**

### *California Coastal Commission*

The California Coastal Commission was established by voter initiative in 1972 (Proposition 20) and later made permanent by the Legislature through adoption of the California Coastal Act of 1976. The Commission is an independent, quasi-judicial state agency. The Coastal Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government. Under the California's federally-approved Coastal Management Program, the California Coastal Commission manages development along the California coast except for San Francisco Bay. California's coastal management program is carried out through a partnership between state and local governments. Implementation of Coastal Act policies is accomplished primarily through the preparation of local coastal programs (LCPs) that are required to be completed by each of the 15 counties and 61 cities located in whole or in part in the coastal zone. Completed LCPs must be submitted to the Commission for review and approval. An LCP includes a land use plan (LUP) which may be the relevant portion of the local general plan, including any maps necessary to administer it, and the zoning ordinances, zoning district maps, and other legal instruments necessary to implement the land use plan. Coastal Act policies are the standards by which the Commission evaluates the adequacy of LCPs. Amendments to certified LUPs and LCPs only become effective after approval by the Commission. To ensure that coastal resources are effectively protected in light of changing circumstances, such as new information and changing development pressures and impacts, the Commission is required to review each certified LCP at least once every five years.

Development within the coastal zone may not commence until a coastal development permit has been issued by either the Commission or a local government that has a Commission-certified local coastal program. After certification of an LCP, coastal development permit authority is delegated to the appropriate local government, but the Commission retains original permit jurisdiction over certain specified lands (such as tidelands and public trust lands). The Commission also has appellate authority over development approved by local governments in specified geographic areas as well as certain other developments. The mission of the Coastal Commission is to: Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for the environmentally sustainable and prudent use by current and future generations.

The Coastal Act includes specific policies (see Division 20 of the Public Resources Code) that address issues such as shoreline public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands,

commercial fisheries, industrial uses, water quality, offshore oil and gas development, transportation, development design, power plants, ports, and public works. The policies of the Coastal Act constitute the statutory standards applied to planning and regulatory decisions made by the Commission and by local governments, pursuant to the Coastal Act.

#### *California State Lands Commission*

The County of Orange falls within the jurisdiction of the State Lands Commission as a trustee of legislatively granted public trust lands. The County has a responsibility to submit an annual financial report to the California State Lands Commission, (CSLC). Pursuant to the Public Resources Code, (PRC) Section 6306, the County is required to file with the CSLC a detailed statement of all revenues and expenditures relating to its trust lands and trust assets, covering the fiscal year preceding submission of the statement.

For purposes of this division, found in the (PRC), “local trustee of granted public trust lands” means county or a harbor district that has been granted, conveyed or transferred by statute. This includes public trust lands, tidelands, submerged lands, or the beds of navigable waters, through a legislative grant. Every local trustee of granted public trust lands shall establish and maintain accounting procedures in accordance with generally accepted accounting principles, providing accurate records.

All revenues received from trust lands and trust assets administered or collected by a local trustee of granted public trust lands shall be expended only for those uses and purposes consistent with the public trust for commerce, navigation and fisheries and the applicable statutory grant.

#### *California Coastal Zone Act 1972*

The California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health and welfare and to protect public and private property, wildlife, marine fisheries and other ocean resources and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction: that it is the policy of the state to preserve, protect, and, where possible, restore the resources of the coastal zone for the enjoyment of the current and succeeding generations.

#### *2006 Final Environmental Impact Report 591*

The 2006 FEIR report consists of 38 pages of issues, conditions, processes, actions, public input and plans for the landside portion of DPH revitalization project. It adheres to the California Coastal Commission’s, (CCC) responsibility to protect and preserve the coastal tidelands and

waterways. Potential problems are identified and mitigation measures are required to gain approval of the CCC.

The 2011 subsequent Environmental Impact Report (SEIR) is for waterside improvements and includes: "...land use, geology and soils hydrology and water quality, traffic and circulation, air quality noise biological resources, aesthetics, recreation and hazards/hazardous materials." Some of the areas of controversy were air quality, noise impact during construction, site traffic, parking and boat storage.

Orange County Board of Supervisors adopted Resolution No. 88-316 approving incorporation of the City of Dana Point on March 8, 1988. In 1991 the Local Coastal Plan, (LCP) authority for the entire City, including the Harbor was transferred from the County to the City and the LCP became part of the City's General Plan and Zoning Ordinance. Although the Harbor is owned and operated by the County, it is subject to the City's LCP.

**APPENDIX C – Footnote References: Communiqué, Website & Interviews**

1. Orange County Archives: <http://ocarchives.com/>
2. Dana Point Harbor: <http://ocparks.com/beaches/dana/>
3. <http://www.fws.gov/habitatconservation/Omnibus/R&HA1962.pdf>
4. Orange County Archives: <http://ocarchives.com/>
5. <http://www.slc.ca.gov>
6. Chapter 321, Statutes of 1961, State of California:  
[http://www.slc.ca.gov/Granted\\_Lands/G09\\_Orange/G09-00\\_County\\_of\\_Orange/S1961\\_Ch321%20.pdf](http://www.slc.ca.gov/Granted_Lands/G09_Orange/G09-00_County_of_Orange/S1961_Ch321%20.pdf)
7. Scope Creep: [http://en.wikipedia.org/wiki/Scope\\_creep](http://en.wikipedia.org/wiki/Scope_creep)
8. United States Census Bureau, 2010: <http://www.census.gov/2010census/>
9. <http://www.coastal.ca.gov/legal/proposition-20.pdf>
10. Interview: Counsel of California Coastal Commission
11. Communiqué from the California Coastal Commission to City of Dana Point; February 14, 2007

And:

**Fig 4. Aerial Legend of Dana Point Harbor:** <http://ocdph.com/about/harbor>

**APPENDIX D – Acronyms & Abbreviations**

ASR – Agenda Staff Report

CCC – California Coastal Commission

CDP – Coastal Developmental Permit

CEQA – California Environmental Quality Act (1970) a public resources code.

CPM – Critical Path Method that defines project schedules, budget; gives project progress report.

EIR – Environmental Impact Report

FEIR – Final Environmental Impact Report

HBP – Harbor Border Patrol

IP – Local Coastal Plan and Implementation Plan

KS – Contracts in legal terms

LCP – Local Coastal Plan/Program

LCPA – Local Coastal Program Amendment

LUP – Land Use Plan

ORCA – Organization of Regional Coastal Activists; website: [www.calorca.org](http://www.calorca.org).

PDSB – Planning and Development Services Department

PFRD – Public Facilities Resource Department

SEIR – Subsequent Environmental Impact Report