



# County of Orange

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County Executive Office

October 17, 2018

James Lenthall, Chair  
Dana Point Harbor Advisory Board  
14 Monarch Bay Plaza, #244  
Dana Point, CA 92629

RE: County of Orange and Dana Point Harbor Partners Responses to Dana Point Harbor Advisory Board Option Term Deliverable Comments.

Mr. Lenthall,

On behalf of the County of Orange (“County”) and Dana Point Harbor Partners (“DPHP”), please see our feedback to your questions, comments and requests submitted in your letter dated October 5, 2018. We appreciate your interaction and engagement in this process during the option period between the County and DPHP, and feel that your involvement has contributed to the process. As you and the advisory board are aware, this is an iterative process and the majority of the deliverables being developed, reviewed and refined are conceptual and will evolve over the master lease term based on input from the boaters, merchants, community, and City of Dana Point, and will incorporate County and industry best practices and standards. We look forward to receiving additional input, and towards the public meeting of the Advisory Board on October 22, 2018.

## **Dry Slip and Dry Storage License Agreements**

Dana Point Harbor Advisory Board (“DPHAB”) Comment #1. The boat slip and dry storage license agreements do not describe how possessory interest tax (“PIT”) will be paid and by whom. Will DPHP pay PIT as the master lease holder? Will PIT be passed through to the tenants as a line item on their slip/storage invoices? Or will marina tenants be responsible for paying PIT directly to the County as they do now?

**It is our information that DPHP will assessed and be responsible to for the payment of PIT as the master lease holder. PIT will not be passed through to the tenants as a line item on their slip/storage invoices, nor will marina tenants be responsible for paying PIT directly as they do now.**

DPHAB Comment #2. Will partnerships be allowed to initiate new slip and dry storage license agreements? DPHAB recommends that up to three equal partners be allowed to initiate an agreement, however additional partners cannot be added once the agreement is executed; partners may be removed. If partnerships are not allowed, how will inheritance be handled when a vessel is demonstrably co-owned at the initiation of the agreement, but the single licensee of record passes?

**Yes, partnerships, LLC's and other entities will be eligible to initiate new license agreements.**

DPHAB Comment #3. How will after-hours access be provided to owners of vessels in dry storage? A management plan should be available that describes how owners can arrange access to their vessels after-hours.

**As described in Exhibit G, Minimum Standards, attached to the Drystack Master Ground Lease Agreement, we are required to use reasonable and diligent efforts to develop and implement procedures or services to allow for removal of boats from dry storage for after-hours access and departures. The development of these procedures will continue during the master lease term.**

DPHAB Comment #4. Parking availability and vessel-to-parking ratios are not described in the license agreements. Is this forthcoming in the parking management plan? A parking management plan should describe parking to vessel ratios, boater parking access control and parking locations relative to assigned boat slips.

**This information is addressed in the Marina Site Development Plan Submitted pursuant to section 8.1.4 of the Option Agreement.**

DPHAB Comment #5. Dry boat storage and smaller vessel wet slip liability insurance requirements are increased substantially over current minimum requirements and exceed industry trends. Why? Will existing tenants be required to increase their coverage? DPHAB recommends keeping current minimum insurance requirements.

**For smaller vessels, industry standard for first-class marinas is \$500,000, which has been verified with several marinas throughout Southern California.**

DPHAB Comment #6. License agreements state "vessel owner must maintain a minimum of 20% interest in vessel and an interest in vessel equal to or greater than that of all other parties". How will this be verified at initiation of agreement and routinely thereafter? A reliable means of validating vessel ownership must be implemented.

**There is no easy and reliable way to confirm ownership percentages of LLC's and partnerships, so this will be a management intensive task that will be implemented during the master lease term.**

DPHAB Comment #7. Attachment B, #7 – What is an “appropriate size” vessel? What is the minimum length allowed in a given slip size? Will it be a defined percentage of total slip length?

**The minimum length of a vessel in a given slip will be determined by the Marina Manager.**

DPHAB Comment #8. Attachment B, #7 – States that a vessel’s beam may not be greater than 90% of the total slip width. How is this measured? Total vessel beam, or beam at the waterline? What about existing tenants with allowances for beams wider than 90% of slip? How will they be accommodated in the new marina? Exceptions should be made for existing tenants up to 95% of the slip width unless doing so creates a specific hazard.

**It is measured as total vessel beam. An exception will be made for existing tenants up to 95% of the slip width unless doing so creates a specific hazard.**

DPHAB Comment #9. Attachment B, #7 – States that a vessel’s permissible overhang may extend to 10% of the total slip length. How will existing tenants in slips less than 30’ and with overhangs up to the presently-permitted three feet be accommodated in the new marinas? Will they be allowed to continue with a 3-foot overhang, or will they be reassigned to a larger slip?

**An exception will be made for existing tenants of vessels less than 30’ to allow up to a 3’ overhang unless doing so creates a specific hazard.**

DPHAB Comment #10. Attachment B, #15 – States drying clothes is not permitted. What about towels or bathing/wet suits after swimming? Allowances should be made for non-laundering drying of swim gear.

**The distinction between laundry and swimsuits will be made by the Marina Manager.**

DPHAB Comment #11. Dry storage agreement states that signs are not permitted in the dry storage facility. May a boat owner display a “for sale” sign on their vessel? DPHAB believes an exception should be allowed for reasonably-sized “for sale” signs to be displayed on vessels.

**A display area for dry storage tenants to post or advertise the sale of their vessels will be made available by DPHP during the master lease term.**

### **Waitlist Policy**

DPHAB Comment #1. Waitlist policy states that applicants may not appear on more than one waitlist. Clarification requested. DPHAB believes one individual should be allowed on

more than one size category waitlist. An applicant may be waiting to acquire a boat based on which slip size becomes available first. This is especially important as long as waitlist durations are measured in years.

**DPHP is willing to agree to allow people to maintain a position on multiple waitlists, and will work to implement this policy during the master lease term.**

DPHAB Comment #2. Waitlist policy states that a new applicant must sign the log book within 5 days. DPHAB recommends 30 days.

**DPHP agrees that a more reasonable time period would be 15 days.**

DPHAB Comment #3. Will there be a slip transfer request and waitlist policy? How will relocation requests be processed in a fair and balanced manner? DPHAB requests a transfer policy similar to the waitlist policy.

**DPHP will institute a fair process for existing tenants to request slip transfers, however, this is not an issue that is part of submittals or deliverables and thus will be developed in cooperation with the County and advisory board during the master lease term.**

DPHAB Comment #4. DPHAB requests information on how the waitlist and slip licensees of record will be audited to ensure the integrity of the waitlist and slip assignments and to avoid prohibited slip transfers. DPHAB requests a publicly- available list with applicant name, application date, and slip size(s) requested, as well as a list of slip licensees of record, slip assignment date, and vessel name and description.

**The waitlist and slip license records will not be made publicly available, however, we will provide a “right of inspection” to a duly appointed member of the Dana Point Boaters Association (provided that person is not on a waitlist) to review and verify the integrity of the waitlist and slip assignments on a regular basis.**

### **Transition Policy**

DPHAB Comment #1. Transition policy provides that a vessel may be assigned to a new slip prior to activation of utilities. DPHAB requests a reasonable time limit for utilities activation after a vessel is assigned to a slip in the event activation of utilities is delayed. Some vessels do not tolerate extended periods without supplied power.

**We anticipate that utilities will be activated for all slips prior to tenancy following the redevelopment. However, if a situation should arise where utilities are not activated yet, DPHP will work diligently to limit the period of time that the slip holder remains without utilities. When redeveloped slips are made available, the slip holder must take possession in order to maintain an orderly construction schedule as we move from area to area.**

### **Marina Conceptual Plan**

DPHAB Comment #1. Clarification requested on designation of “sail boat slips”. Will sailing vessels be permitted to occupy slips not specifically designated as “sail boat slips.” DPHAB assumes this designation is utilized to provide for a subset of narrower slips, but does not restrict sailing vessels to these designated slips. Is that correct?

**Yes, that is correct.**

DPHAB Comment #2. The marina conceptual plan does not show the existing dry boat and equipment storage area associated with tenants of the Sailing and Events Center, specifically where the outrigger canoes and Sea Scouts equipment is located. Where is this in the new plan? DPHAB believes a storage area of similar size and location be described in the plans, and further that the existing lease premise exclusions for the SEC include this storage area so that the occupancy arrangement remains directly with the County (OC Parks).

**DPHP is still completing due diligence, exploring options and conceptual planning related to all the licensed organizations associated with the Sailing and Events Center, including the Outrigger Canoe Club and Sea Scouts. DPHP and the County are working toward a plan that best accommodates those organizations and their needs, including storage during the master lease term. While this is not a specific option deliverable, we understand its importance, and will be developed in cooperation with the County and advisory board during the master lease term.**

### **Retail Lease Template**

DPHAB Comment #1. DPHAB requests the plan for how rents will be formulated during construction.

**The existing tenant leases include an amendment to their lease prepared by the County addressing the contemplated revitalization project and the procedure for how rents will be formulated during the construction process. All tenants should refer to this amendment, as the existing leases will be assumed by DPHP. Any tenants who may not have the revitalization amendment attached to their lease, should have standard lease language referring to landlord’s ability to perform construction during the lease term and that further outlines landlord and tenants’ rights and obligations during that period. Notwithstanding the referenced amendment and/or lease provisions addressing construction, DPHP will work closely with all tenants and undertake measures to keep all business open and functioning during the revitalization construction. In the event individual tenant sales are indeed substantially impacted during the construction period, DPHP will endeavor to take steps to offer tenants further assistance during the construction period including concessions such as abatement of annual minimum base rent. Each of these cases shall be evaluated and negotiated on a case by case basis.**

**Other**

DPHAB Comment #1. DPHAB requests a detailed slip rate policy that describes how slip rates will be formulated and communicated to tenants, when and how rates increases are implemented, how increases are communicated to tenants.

**While this is not an option deliverable, pursuant to the terms of the master lease, DPHP is required to provide advance written notice to the County and all tenants under existing slip licenses of any raises in the slip rental rates. The master lease terms require that the notice include DPHP's rationale and methodology for the raise. Established pricing will be "market rate" as determined by DPHP, consistent with the Tidelands Grant.**

Thank you for your cooperation and participation in this process. Please let us know if you have any additional questions or comments.

Respectfully,



Thomas A. Miller  
Chief Real Estate Officer  
County of Orange

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Agreed and Approved:



Bryon Ward  
Dana Point Harbor Partners

cc: James Dinwiddie - Senior Policy Advisory, Fifth Supervisorial District  
Stacy Blackwood - Director, OC Parks  
Joe Ueberroth - Dana Point Harbor Partners  
Bob Olson - Dana Point Harbor Partners