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Slip Rate Notification - Summary of Concerns/Questions from Letters & Emails Received

Collectively, the letters (5) and emails (15) reflect that certain boaters or member of the public feel that the proposed slip rate increase is unfair and not based on a proper comparison. The letters and emails from the boaters/stakeholders express being concerned about affordability and the impact on the middle class. They urge a more transparent process and a broader survey that includes public marinas with similar amenities.

- **Unfairness of Increase:** Respondents believe the increase is excessive and disproportionately affects middle-class boaters. They question the methodology used to justify the rates, and propose a broader methodology that includes marinas from Santa Barbara to San Diego.
- **Comparison Issues:** Criticism centers on comparing slip fees to primarily private marinas in Newport Beach, as opposed to Alamitos Bay and Oceanside. They argue for including marinas open to the public vs. privately controlled slips and a wider geographic area with similar amenities.
- **Focus on Amenities:** Respondents point out that Dana Point's existing amenities are outdated; suggesting they do not justify the proposed rates compared to the newer slip facilities/other new marinas. However, they do not address how the comparison marinas that they have proposed are more appropriate than the ones utilized by Dana Point Harbor Partners (DPHP) in their comparison data.
- **Transparency Concerns:** Some respondents express dissatisfaction with the lack of transparency in the rate increase process, calling for a breakdown of expected revenue and more time for public review.
- **Impact on Boaters:** Concern among boaters of being priced out due to the new rates. There was concern expressed by one person that liveaboard boaters will be particularly impacted.
- **Partnership with DPHP:** Correspondence questioning the partnership with DPHP and urge the County to prioritize boaters' interests.

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Consolidated Questions - from Letters (5) & Emails (15) Received from Stakeholders:

Topic	Questions (Consolidated from Original)	Answers
Oversight/Transparency in the Planning Process	1. Why were certain parties not included in the planning of slip rate adjustments?	The original plan contemplated the proposals to be presented to the DPH oversight committee for input before the slip rate rates were decided.
Transparency of the Negotiations	2. Why were negotiations not documented in Supervisor Foley's Weekly Updates?	Supervisor Foley and CEO Real Estate met in November of 2023 with DPHP to discuss a variety of issues related to the harbor. At that time, DPHP presented potential rate increases. The plan was for DPHP to prepare a formal proposal to the CEO Real Estate Office and Supervisor Foley's Office and present it to the DPH Oversight Committee. It's important to note that DPHP released the slip rate letters before the scheduled DPH OAC. This preemptive action prevented Supervisor Foley and the County from presenting the item to the DPH OAC in advance, thus hindering the intended degree of transparency.
CPI	3. Why is the previously approved County policy of utilizing the Consumer Price Index no longer valid?	The policy referenced dates back to 2001 and applied to the previous operational structure in the Harbor. However, it has not been applicable for years. The master lease between the County and DPHP now serves as the document governing DPHP and the operation of the Harbor. The lease was approved by the Board of Supervisors and dated October 28, 2018, and replaced prior policies associated with the County's operation of the



		<p>Harbor, reflecting the changes in the operational structure. The current lease requires in Section 11.9 that slip rates be 'market rate' and that DPHP provide supporting rationale and methodology for the market slip rates.</p>
<p>Authority / Decision-Making Power in Setting Slip Rates</p>	<p>4. Why has DPHP been granted unsanctioned freedom to raise slip fees? What are the checks and balances?</p>	<p>The master lease between the County and DPHP serves as the document governing DPHP, and the operation of the Harbor, mandating they operate the Harbor within its constraints. DPHP does not have unilateral freedom to raise slip rates. The lease requires slip rates to be market rate and requires DPHP to provide supporting documentation to substantiate any proposed adjustments. Section 11.9 of the master lease reads that the slip rates 'will be "market rate" pricing as reasonably determined by Lessee; provided, however, that in all events such prices shall be consistent with the limitations on pricing as mandated by the Tidelands Grant. In addition to the foregoing, with respect to the Slip Leases specifically, Lessee shall be required to provide advance written notice to County and all tenants and/or licensees under existing Slip Leases of any raises in the slip rental rates, which notice shall include Lessee's rationale for such raise as well as its methodology for determining the same.'</p>



<p>Modifications to the Slip License Agreement</p>	<p>5. Why was Mr. Ueberroth/DPHP allowed to modify the Slip License Agreement? Did the County approve this and was it done to generate immediate/substantial revenue just after signing the Ground Lease?</p>	<p>The Slip License Agreements are agreements between DPHP and the licensee. The form of the license agreement must be approved by the County before being utilized by the Marina at Dana Point.</p>
<p>Marina Comparison</p>	<p>6. Why is only Newport Beach utilized for justification of market rate prices? Shouldn't marinas similar to and including Alamitos Bay and Oceanside be considered as well?</p>	<p>According to the supporting documents accompanying DPHP's slip rate notice to the County, the market for boat slip licensees and those on the wait list extends from Dana Point to Seal Beach. This area selected by DPHP defined the 'market' within which the rates were surveyed for comparison to the newly proposed rates. In addition, amenities at various marinas were surveyed to determine comparability with Dana Point Harbor, as detailed in the supporting documentation provided by DPHP.</p>
<p>5-Year Plan</p>	<p>7. Why didn't DPHP include the 5-year plan with the notification letter to tenants? Why was five consecutive years of increases agreed upon?</p>	<p>Supervisor Foley directed CEO Real Estate to initiate an independent third-party appraisal. While DPHP has developed a 5-year plan, only the first-year rate increase has been proposed and instituted at this time. The idea was that the 5-year plan would be presented to the Oversight Committee for review, input, and recommendations before notifying the boaters. The intent of a five-year plan was to provide licensees clarity regarding how their rates will progressively increase over time and advance planning, rather than these increases occurring in a more ad hoc and arbitrary manner.</p>



<p>Notification Terms and Consequences of Default in Ground Lease</p>	<p>8. Did DPHP violate the terms of the Master Ground Lease, Section 11.9, by failing to notify the County and the tenants of the 5-year rate adjustment plan and to supply rationale and methodology for these adjustments? If so, what are the consequences? What constitutes a default of the Master Ground Lease?</p>	<p>Yes, in part DPHP notified the County of the 2024 slip rate increase, by letter, on February 22, 2024. While the County sought to engage on this topic, requested to meet and discuss, and wanted to have the plan presented at the DPH OAC meeting, DPHP sent the slip rate increase notices to licensees prior to that occurring. Failure to comply with “material” provisions of the Master Lease constitutes a default, which, to date, has not occurred.</p>
<p>Disparity in Rent Increases</p>	<p>9. Have commercial core tenants had their rents increased like the slip tenants?</p>	<p>No. The way the lease agreement was written in 2018 when approved, allows the DPHP far more flexibility than maybe some might want. Lease rates in the Commercial Core have remained the same since DPHP signed the Master Lease in 2018.</p>
<p>Rent Increase Plans for Commercial Core Tenants</p>	<p>10. Has a 5-year plan of rent increases been formulated for the tenants of the Commercial Core?</p>	<p>No. Each lease in Commercial Core will be negotiated separate and will have different tenants and rate creases based on various other factors. The County has not been presented with a 5-year plan for rental rates within the Commercial Core.</p>
<p>Allocation and Documentation of Slip Rental Income</p>	<p>11. How was the slip rental income spent (\$18,144,801 per Q4 report) and how can the documents containing these allotments and expenditures be accessed?</p>	<p>Approximately \$11M was spent to cover operating expenses, and to date, DPHP has spent over \$28M constructing Phases 1-5 of the Marina Improvement Project. The operating expenses for 2022-2023 can be located within the Quarterly Report (Q4) found on the D5 webpage: https://d5.ocgov.com/dph-financials</p>



<p>Use of Slip Rental Income Post-Revitalization</p>	<p>12. What will the excessive amount of slip rental income be used for once the Revitalization is complete?</p>	<p>Rent received from DPHP from tenants will be used to repay financing, pay their rent under the master lease, as well as funding new amenities and ongoing maintenance and infrastructure costs associated with operating and maintaining the slips.</p>
<p>Comparable Marina Analysis in Negotiations</p>	<p>13. Was the analysis of comparable marinas part of the negotiations resulting in the creation of the Partner's June 1st increase and 5-year plan?</p>	<p>In Part. Analysis of rates for marinas within the DPHP defined market area, as well as amenities for those marinas is included within the 5-year plan and served as the basis for the notification. However, Supervisor Foley and County staff have requested that DPHP provide further detail on the selection criteria and more in-depth analysis on the amenity survey, price comparison, methodology, etc.</p>
<p>Slip Increase in Connection with Amenities</p>	<p>14. Given that the proposed rent increase applies to all slips in Dana Point Harbor, regardless of whether they have outdated amenities (old docks) or limited amenities in new areas (no cable, potential safety concerns), how can DPHP justify the increase if boat owners feel they aren't receiving a corresponding value in return?</p>	<p>Based on the market data and amenities for comparable marinas provided by DPHP, this rate looks to be at the low end of the market. Ensuring that all tenants contribute proportionally to the overall upkeep of the harbor, regardless of the specific amenities they have access to, promotes fairness and equity among all users. Even in areas without new amenities, there are ongoing maintenance and infrastructure costs associated with operating and maintaining the slips. Market conditions presented by DPHP appear to justify an increase in slip rates across the board.</p>



<p>Fairness of Slip Fees for Old and New Slips</p>	<p>15. Why are Dana Point boat owners assigned to old slips paying the same amount as boat owners assigned to new slips in Phases 1-5? Shouldn't there be a reduction with the variance in amenities? Should the June 1st increase only apply to tenants in new phases?</p>	<p>DPHP has proposed uniform slip fees to maintain fairness across all slips, ensuring that no particular slip is perceived as more desirable or advantageous. Ensuring that all tenants contribute proportionally to the overall upkeep of the harbor, regardless of the specific amenities they have access to, promotes fairness and equity among all users. Even in areas without new amenities, there are ongoing maintenance and infrastructure costs associated with operating and maintaining the slips. Market conditions presented by DPHP appear to justify an increase in slip rates across the board.</p>
<p>Disparity in Slip Fees Between Alamitos Bay & Dana Point</p>	<p>16. Why is it more affordable to dock in Alamitos Bay compared to Dana Point? (Stating LB only focused on affordable as fiscally possible vs. Dana Point creating exorbitant surplus revenue)</p>	<p>The County is unaware of the methodology that is used at Alamitos Bay for slip fees or increases.</p>
<p>Frequency of Oversight Meetings and Access to Committee Meetings</p>	<p>17. Can the Oversight Advisory Committee meetings be live-streamed or set up for Zoom? Would it be possible to have OAC meetings bi-monthly as well?</p>	<p>While the advisory meetings are not public, the committee members were carefully chosen for their expertise and ability to represent the diverse interests within the Harbor community. Keeping these meetings closed to the public ensures focused discussions and enables the committee to make efficient progress without being overwhelmed by excessive input.</p>



Additional Questions were received via a response letter from Dana Point Boaters Association (DPBA) to Supervisor Foley dated 4/29/24. The questions have been summarized below:

Topic	Questions (Consolidated from Original)	Answers
5-Year Plan Formulation	1. How can a five-year slip rate plan be formulated without taking into account the whole financial picture of the harbor? Has the County studied the Five-Year projections of the whole harbor project?	Per the master lease, slip rates are required to be within market. This is based on the established market within which the Harbor exists, and not necessarily the other components of the Harbor.
Slip Increase in Connection with Amenities Offered (Old vs. New Slips)	2. Shouldn't the services/amenities offered at the Marina have an effect on the pricing?	The services and amenities offered at the Marina at Dana Point determined which marinas were used for market comparisons, as they needed to have similar amenities to be considered comparable. The 5-year plan proposed by DPHP includes a comparison of those amenities.
Fairness of Slip Rate Increases	3. Are the percentage increases for slip rates equitable?	Based on the market data provided by DPHP the increases aim to keep the slip rates at the low end of the market.
Slip Mix on D5 Website	4. Is the slip mix posted on the Supervisor's DPH website accurate and approved?	All documents posted on Supervisor Foley's website are the most up-to-date.
Comparable Marina Analysis	5. Is there a comparison of rates at marinas in nearby locations like Oceanside, San Diego, and Long Beach with tenants that reside in Orange County?	Based on the market data provided by DPHP, these marinas are outside of the market based on the tenants of DPH and the amenities provided.



Additional Questions were received via two (2) response letters to Mat Miller dated 5/5/24 and via DPH Oversight Email on 5/20/24. The questions have been summarized below:

Topic	Question	Answers
Slip License Agreement Data Accuracy	1. The modification of the Slip License Agreement and the increase in slip fees was not properly communicated, and there were inconsistencies in the measurement process resulting in different monthly rates for identical makes and models of boats. – what can be done to rectify this issue?	DPHP's protocol includes measuring vessels to ensure accurate Length Overall (LOA) calculations. If a tenant believes their LOA measurement is incorrect or an error has occurred, they should contact the Marina at Dana Point to have their vessel remeasured.
Transparency and Integrity	2. What actions are being taken to ensure the integrity of the license agreements and correct inaccuracies in tenant information?	Before implementation, the County must approve the form of the Slip License Agreement (SLA) utilized by the Marina at Dana Point. The SLA is an agreement between DPHP and the slip tenant, emphasizing the responsibility of the slip tenant to ensure they understand the terms and sign an SLA with accurate tenant information.
Slip Fee Increases and Rationale	3. What is the controversy surrounding the validity of the June 1st slip fee increase and the 5-year plan, and what is the rationale for the slip fee adjustments based on the consumer price index?	<p>On February 22, 2024, DPHP notified the County of an impending slip rate increase. Despite the County's expressed interest in discussing the matter and presenting the plan to the DPH OAC prior to implementing the slip rate increase, DPHP proceeded to distribute the slip rate notices to licensees before these discussions took place. To discuss and understand these issues, and to garner feedback, a presentation of the slip rate increases, and the 5-year plan is scheduled for the May 21, 2024, DPH OAC meeting.</p> <p>The slip rate increase is based on market data from comparative marinas in Orange County, not on the Consumer Price Index (CPI).</p>



Topic	Question	Answers
Financial Accountability	1. When will DPHP be held accountable for financing the revitalization project?	The DPH Revitalization, totaling approximately \$610 million, will be fully financed by DPHP, using a mix of debt and equity. As of December 2023, DPHP has already allocated more than \$50 million towards the initiative and secured a \$60 million construction loan, demonstrating substantial financial commitment and progress towards the project's completion.
Transparency	2. Why was a previous Oversight Committee meeting cancelled?	Key members from DPHP were unavailable to present on the 5-Year Plan at the April DPH OAC meeting therefore the meeting was rescheduled to ensure key representatives were available to participate in the discussion.
Transparency	3. How will questions be presented to DPHP and will there be an opportunity to respond?	At the DPH OAC meeting, DPHP will provide a presentation on their 5-year rate plan presentation, followed by a Q&A session. The questions and answers will subsequently be made available on Supervisor Foley's website. In addition to the Q&A session during the committee meeting, members of the public will have the opportunity to submit questions to the oversight manager via email and during the Town Hall scheduled for June 21st. This ensures that individuals who are unable to attend the meeting in person can still participate and contribute their queries to the discussion.
Representation	4. How can the Committee effectively represent the harbor population if they are not informed on specific elements of the project?	The Committee was formed to bring together a diverse group of stakeholders. This includes business owners, boaters, city staff, members of the public, and representatives from non-profit and community groups. The Committee's mission is to actively engage in reviewing, analyzing, and evaluating challenges faced by the Harbor. Committee members then



		share their insights and findings with their wider networks. The project team is committed to ongoing communication with stakeholders by actively addressing concerns and publish information as quickly as possible through Supervisor Foley's website, newsletters, and other channels.
Transparency	5. Why has the Town Hall meeting been minimized?	The Town Hall meeting has not been minimized; rather, it's been scheduled at a time that aligns with practical considerations, enabling it to take place. This public forum will allow for a comprehensive exchange of information, and we encourage those who are able to attend. For those that are unable to participate at the Town Hall in person, a recording of the meeting will be made available on the Supervisor Foley's website after the event, facilitating engagement for all interested parties.
Slip Rate Increase	6. Did DPHP violate the Master Lease Agreement with the slip fee increase in November 2018?	No
Legality	7. Is it legal to have so many slip fee increases in a short period?	Generally, there are no laws prohibiting marina operators from increasing slip rates. Prior to the scheduled increase in June 2024, the last rate adjustment implemented by the Marina at Dana Point occurred in September of 2021. Marina slip rentals are considered licenses of real property, which means the terms of the slip license agreement dictate the parameters of any increases or other terms and conditions. Under the Master Lease, DPHP is required to provide advanced written notice and provide justification, including rationale and methodology for such adjustments. This information



		was provided on February 22, 2024.
Slip Increase	8. Why is the recent increase being scrutinized more than previous ones?	This rate adjustment is being reviewed. Reviewing the methodology and market information is part of the oversight process for the Master Lease. The recent slip adjustment is an opportunity for DPHP to present market data, methodology and their rationale in advance of tenant notifications and implementation – to garner feedback and provide justification.
Measurement Practices	9. Why are undersized and oversized boats being assigned to new slips if they were measured in 2018 to authenticate their records?	While boat sizes were measured in 2018, existing tenants who are assigned new slips retained the ability to choose a slip that may not precisely match their boat size. This allowance is contingent upon ensuring it does not cause safety hazards, hinder navigation within the marina, or damage the marina's infrastructure. However, it's important to note, that this flexibility only applies to existing tenants. New tenants are required to choose slips that comply with the current marina policy, including size restrictions.
Measurement Practices	10. Why are Coast Guard documents and factory specifications no longer valid for determining slip fees?	While these documents may offer insights into vessel size and specifications, they have never been the sole basis for determining slip fees. Marina operators have consistently relied on their own evaluation criteria and operational considerations to set slip fees in alignment with its policies and goals. DPHP's protocol includes measuring vessels to ensure accurate Length Overall (LOA) calculations. If a tenant believes their LOA measurement is incorrect or an



		error has occurred, they should contact the Marina at Dana Point to have their vessel remeasured.
Fairness	11. Why are new phases being populated with boats coming off the waitlist? What are the options for current tenants who have chosen to wait for a slip of their choice to become available, or who have delayed their selection for as long as possible?	If a current slip holder chooses to wait for a later phase to move into a new slip, DPHP will not require them to move if there's space available for them to wait. In such instances, if a slip holder decides to wait, a boater from the wait list is offered the opportunity to occupy the available slip. Per DPHP, there will be sufficient space in later phases to accommodate current slip holders who choose to wait.



Additional questions were received as a result of the Oversight Committee Meeting on 5/21/24. The questions have been summarized below:

<p>Slip Increase Tidelands Grant</p>	<p>1. Does the Tidelands Grant limit “Market Rate” in our case?</p>	<p>The Tidelands Grant contains no specific restrictions on the ability of a County’s lessee to charge market rate. The only reference to rates in the Tidelands Grant is found in Section 1(c), which states, “in the management, conduct or operation of said harbor, or of any of the utilities, structures, appliances or facilities mentioned in paragraph (a), no discrimination in rates, tolls, or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said county or its successors.”</p>
<p>Slip Increase Vessel Size</p>	<p>2. Boat size doesn’t accurately reflect a boat owner’s ability to pay for a slip fee increase – how can this be approached differently? Should DPHP reconsider the tiered rate plan and implement a flat rate increase for all slip sizes?</p>	<p>The pricing structure for larger boats was not based on owners’ financial capabilities but rather on market dynamics. The tiered percentage increase was discussed with the County because it was aligned with market trends. The data in the 5-year plan appears to support a tiered structure that is farther below market, and even an equal percentage increase would not put the fees above market.</p>

