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# F10a

May 30, 2024

**TO:** Commissioners and Interested Persons

**FROM:** Karl Schwing, Deputy Director, South Coast District  
Shannon Vaughn, District Manager  
Amrita Spencer, District Supervisor  
Shahar Amitay, Coastal Program Analyst

**SUBJECT:** Amendment Request No. LCP-5-DPT-21-0079-2 to the City of Dana Point Certified Local Coastal Program, for Public Hearing and Commission Action at the June 12-14, 2024 meeting.

## **SUMMARY OF LCP AMENDMENT REQUEST NO. LCP-5-DPT-21-0079-2 (2-21)**

Local Coastal Program (LCP) Amendment Request No. 2-21 would amend multiple sections of the City of Dana Point certified LCP, including the certified Land Use Plan (LUP) and Implementation Plan (IP) pertaining to the Dana Point Harbor (together known as the Dana Point Harbor Revitalization Plan & District Regulations). Currently, the certified LCP contemplates a future hotel in Planning Area 3 (PA 3), a 9.5-acre site on public tidelands within the Dana Point Harbor, which would replace the existing 136-room hotel onsite (the Marina Inn). The existing LCP language allows for a maximum of 220 lower-cost guest rooms, and moreover, requires an LCPA if a future plan deviates from the existing requirements of the LCP, including the conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost units, and construction of any new/additional units that are anything other than lower cost units. The City is therefore requesting an amendment to modify the LUP and IP to allow for the replacement of the existing hotel with a new lower-cost hotel of equal room count and room rates ("Surf Lodge"), as well as the construction of a new 130-room market rate hotel ("Dana House Hotel"). In addition, the City is requesting reconfiguration of the existing boater service buildings and parking areas within PA 3 to be incorporated into the planned hotel development.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission **deny** LCP Amendment Request No. 2-21 as submitted by the City of Dana Point and **approve** certification with **seven (7)** suggested modifications necessary to protect coastal resources including public access, lower-cost overnight accommodations, recreational opportunities, public coastal views, coastal-dependent development, and biological and marine resources. The motions and resolutions to carry out the staff recommendation are on **pages 10 through 12**. The

suggested modifications to the LCP amendment request are included starting on **page 13** of this staff report (as well as an in-text format for ease of read in [Appendix B](#)).

The standard of review for the changes to the LUP is whether the amendment meets the requirements of and is consistent with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed changes to the IP is whether the amendment conforms with and is adequate to carry out the provisions of the LUP portion of the certified City of Dana Point LCP as amended.

The amendment request is project-specific to allow for the demolition of an existing hotel and construction of two new hotels within Dana Point Harbor. Under the Coastal Act and the Dana Point LCP, priority is given to visitor-serving commercial development that supports public coastal-dependent recreation over other land uses such as general commercial or private institutional development, especially in tideland harbor areas held in public trust, such as the case here. Not only are visitor-serving uses, such as overnight accommodations, crucial in providing public benefits and supporting recreation on the coast, but they can also serve underserved segments of the population if provided at lower-cost. In this case, the Marina Inn is an existing lower- to moderate-cost facility containing 136 lower- to moderate-cost rooms near the waterfront and is thus a valuable resource and asset for visitors to the Harbor, especially to inland and low-income visitors who have historically faced barriers when visiting the coast. In fact, a significant bulk of the available lower-cost/moderate-cost units in the Dana Point coastal zone are the 136 rooms at the Marina Inn. For this reason, the existing language in the certified LCP ensures protection of lower-cost facilities in accordance with Section 30213 of the Coastal Act, especially as plans for the hotel's demolition have long been contemplated.

The key issue raised by this LCP amendment request is the adequate protection and provision of lower-cost visitor-serving overnight accommodations in association with the construction of the two new hotels. Under the certified LCP, LUP Policy 5.2.1-2 allows future replacement hotel units to be offered at the existing Marina Inn rates or lower; however, this policy language was written under the assumption that the Marina Inn would still be lower-cost over the long-term, and that assumption has recently come into question. In the current statewide context, the existing ADRs at the Marina Inn would qualify as moderate-cost. The City's proposed amendment would retain the existing requirements in LUP Policy 5.2.1-2 and specify that it applies to the 136 lower-cost replacement units proposed at the Surf Lodge. The relatively higher price point that would thus apply to the Surf Lodge units could create barriers for visitors with limited means to access the coast, especially visitors traveling from inland locations and those from low-income communities that face inequities when visiting the coast. The existing LCP policy sets a certain expectation regarding room rates for any replacement hotel at the site. However, the City, County, and project proponent/developer have demonstrated that it is not feasible to replace the Marina Inn with accommodations that are priced at the lower-cost threshold that the Commission has used in prior decisions, which is 75% of the peak-season (July and August) statewide average daily rate.

The proposed LCPA would allow for room rates of any new replacement hotel to be significantly higher than what the Commission intended at the time of the LCP's

certification. Thus, staff recommends that the “rate differential” between the Marina Inn rates and the more typical statewide lower-cost rates be offset in order for the Commission to find the replacement hotel units to be consistent with the Coastal Act.

As part of earlier discussions, the City, County, and developer worked together to develop a lower-cost overnight access program that would allow for the provision of lower-cost overnight accommodations offsite and within the Harbor, in coordination with the Ocean Institute and the OC Sailing and Events Center ([Exhibit 7](#)). The original intent of the program was to substitute for any additional lower-cost rooms beyond the 136 replacement rooms that may be required in association with the new high-cost hotel. Under that proposal, which is not memorialized in the submitted LCPA, the developer would have been responsible for financially supporting such a program through an in-lieu fee. Staff recommends a suggested modification that incorporates this previously proposed programming in order to offset the Surf Lodge primarily offering moderate-cost rooms.

Coastal Act Section 30213 states that, “[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, **where feasible**, provided.” To be consistent with Section 30213, the Commission has previously taken the approach of requiring that twenty-five percent (25%) of all new market rate hotel rooms proposed be provided onsite (or less preferably, offsite) at lower-cost rates.<sup>1</sup> If shown to be infeasible, the Commission has in past cases determined that an in-lieu fee could substitute for the required lower-cost rooms. In this case, the LCPA considers the construction of a new 130-room market rate hotel. Therefore, if constructed as proposed by the LCPA, at least 33 lower-cost rooms should be provided (i.e., 25% of 130 market rate rooms) for consistency with Section 30213. These can be additive (resulting in 163 total rooms at the Dana House Hotel), replace (resulting in 130 total rooms at the Dana House Hotel), or adjoined to the lower-cost replacement hotel (resulting in 169 total lower-cost rooms at the Surf Lodge). The developer’s submitted feasibility analyses show that at least some project alternatives that fully incorporate the onsite requirement of lower-cost rooms, such as a 169-room Surf Lodge and 130-room Dana House Hotel (described as “Scenario 8” in the reports included as [Exhibit 6](#)), would be financially feasible. However, the submitted amendment request is vague and does not outright require the equivalent of 33 additional lower-cost rooms associated with the development of the high-cost hotel. Suggested modifications are necessary to clarify this requirement, while also making clear that an in-lieu fee option is not appropriate in this case because it is economically and practically feasible to directly provide the rooms onsite.

The City, County, and the developer have agreed to provide the 33 required lower-cost rooms as part of the Surf Lodge (Scenario 8), but the developer would like to offer those rooms at the moderate-cost rates that are proposed for the 136 replacement rooms at the Surf Lodge.

In order to follow the Commission’s typical methodology most consistent with Section 30213 for new lower-cost rooms, which would provide a mix of accommodation types at

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<sup>1</sup> [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

various price points to provide a range of affordability, staff recommends a modification to provide the 33 rooms at no greater than 75% of the peak-season (July and August) statewide average daily rate, adjusted for inflation and accounting for occupancy.<sup>2</sup> The City, County, and the developer contest this recommendation, maintaining that it would render the entire hotel development infeasible, and this remains an area of disagreement.

The City, County, and developer point out that they have put together a separate public access and recreation benefits package amounting to approximately \$110,000 per year ([Exhibit 8](#)). The proposed initiatives are geared toward improving public access and recreational opportunities in the Harbor. This programming, too, was originally envisioned to address the fact that the City's submitted LCPA did not outright require new lower-cost overnight accommodations to compensate for the construction of the new market rate hotel. Even while the City, County, and developer have since proposed that 33 additional lower-cost rooms be incorporated into the LCPA via suggested modifications, they still propose the same scope of programming, which is to be paid in perpetuity (which, over the anticipated 60-year lifespan of the hotel development would amount to approximately \$6.6 million).

Commission staff is supportive of this public access and recreation package, which seeks to promote the Commission's Environmental Justice Policy. The proposed benefits package also allays staff's concerns regarding the developer's recent proposal for use of the public park space bordering the intersection of Island Way and Dana Point Harbor Drive (at the entrance to the Harbor) as a picnic, barbecue, and parking area in connection with the Surf Lodge ([Exhibit 4](#)). Thus, staff recommends that a community benefits package be incorporated into the LCPA through suggested modifications.

Nonetheless, Commission staff communicated to the City, County, and developer that the programming shown in [Exhibit 8](#) would mainly provide public access and recreational improvements, and as proposed, it would not be sufficient to resolve the remaining aforementioned lower-cost overnight accommodation (rate differential) issues associated with the anticipated development. As such, **Suggested Modifications 3 and 5** would require that a certain portion of the overall community benefits package of \$110,000 per year for the life of the development be specifically paid toward lower-cost overnight programming (such as in [Exhibit 7](#)). This would be based on the rate differential and site-specific construction cost estimates for the lower-cost hotel rooms.<sup>3</sup> The remainder of the

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<sup>2</sup> The developer states that some of the new 33 lower-cost rooms may have four-, six-, or eight-person occupancies. The Commission's typical lower-cost threshold is for standard double-occupancy (two-person) rooms at the equivalents of AAA one- and two-diamond rated hotels, and thus staff is recommending adding 10% cost for every additional person above double-occupancy to the Commission's typical lower-cost threshold, consistent with a previous Commission action (Ref. [2-20-0018](#)).

<sup>3</sup> The formula can be restated mathematically as such:

$$([\text{Actual ADR of replacement units (no higher than Marina Inn 2022 annualized ADR + CPI)}] - [75\% \text{ of peak-season statewide ADR}]) / [75\% \text{ of peak-season statewide ADR}] = \text{"markup," and } [\text{site-specific construction costs of lower-cost rooms}] * [\text{number of required lower-cost rooms}] = \text{"in-lieu fee"}; \text{ therefore, } [\text{markup}] * [\text{in-lieu fee}] = \text{"rate differential offset."}$$

In this example,  $(\$186 - \$170.68) / \$170.68 * \$308,636 * 136 = \$3,767,573$ . Over the course of the anticipated 60-year life of the hotel, the offset would be \$62,793 per year.

total sum would be allocated to other public access/recreational programming (such as in [Exhibit 8](#)).

Additional suggested modifications include the protection of existing boater parking and maintenance of services and fixtures in the boater service facilities of existing quality and quantity commensurate with boater demand, considering that the boater service buildings will be relocated and incorporated into the hotel development and reduced in size. Additional benefits to the general public are also suggested, including better access to hand-carry watercraft launch areas, a free public viewing station along Island Way that includes seating, telescopes, and educational signage, and dedication of seating on common roof decks/terraces to the general public.

Finally, minor suggested modifications include new policies that would ensure that the proposed hotel development is consistent with the Coastal Act, including protection of water quality and marine resources, landscaping requirements, provision of non-automobile transit options and minimization of vehicle miles traveled and energy consumption, and reduction of risk from coastal hazards exacerbated by sea level rise.

Therefore, staff recommends that the Commission, after public hearing:

- 1. Deny the LCP amendment request as submitted; and,**
- 2. Certify, only if modified, the LCP amendment request.**

The proposed amendment, if modified as recommended, is in conformance with and adequate to carry out the provisions of the certified Local Coastal Program. **The motions to accomplish this are found on pages 10–12.**

**DEADLINE FOR COMMISSION ACTION**

The proposed LCP amendment was deemed complete on April 17, 2023. A request to extend the deadline to act was granted on July 13, 2023. The final date by which the Commission must act on this LCP amendment request is August 23, 2024.

**ADDITIONAL INFORMATION:** Copies of the staff report are available on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov). For additional information, contact Shahar Amitay in the Long Beach office at [Shahar.amitay@coastal.ca.gov](mailto:Shahar.amitay@coastal.ca.gov) or (562) 590-5071.

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If and when the City issues a CDP for this development, the City would have to recalculate this formula using the latest data available.

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## **I. PROCEDURAL OVERVIEW**

### **A. Standard of Review**

The City of Dana Point presently has two groups of documents that serve as its certified Local Coastal Program (LCP). There is an older set of documents that were originally certified when Dana Point was unincorporated and which were adopted by the City when it incorporated, which still apply to the central geographic area of the City. The central geographic area is generally located between Monarch Beach to the north and Capistrano Beach to the south, including the Dana Point Harbor area that is the subject of the proposed LCP Amendment (LCPA). These older documents have generally been referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development Conservation Plan, and the Dana Point Town Center Plan, which apply to those areas of the City that are not covered by the 1986 LCP. These more recent documents are referred to as the '1996' LCP<sup>4</sup>.

On October 8, 2009, the Commission approved with suggested modifications the land use plan component of the Dana Point Harbor Revitalization Plan & District Regulations, which replaced all relevant sections of the Dana Point Specific Plan in the '1986' LCP. This document became the City's certified Land Use Plan (LUP) for Dana Point Harbor. Consequently, on January 12, 2011, the Commission approved with suggested modifications the implementation plan component of the Dana Point Harbor Revitalization Plan & District Regulations, which intended to implement the LUP and replaced, in its entirety, the relevant implementation sections found in the Dana Point Zoning Code in the '1996' LCP. This document became the City's certified Implementation Plan (IP) for Dana Point Harbor. Together, the LUP and IP constitute the LCP for the Dana Point Harbor area.

The City's current LCPA submittal proposes changes to portions of the certified LUP and the certified IP of the City of Dana Point LCP. The adequacy of the proposed amendment to the City's certified LUP, pursuant to Section 30512(c), is whether the proposed amendment meets the requirements of, and is in conformity with the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendment to the City's certified IP (including any zone text and/or Zoning Code amendments), pursuant to Section 30513 of the Coastal Act and Section 13542(c) of the Commission's regulations, is whether the proposed amendment is in conformance with, and adequate to carry out, the provisions of the certified LUP, as conditionally certified by the Commission.

### **B. Public Participation and Local Review**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states:

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<sup>4</sup> Although this is now a misnomer because the Headlands Development Conservation Plan and the Dana Point Town Center Plan were adopted after 1996.



## LCP-5-DPT-21-0079-2 (Dana Point Harbor Hotels)

During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

The City of Dana Point Planning Commission and the City Council held public hearings on the proposed LCPA summarized below:

The proposed changes to the City's LCP are contained in City Council Ordinance No. 20-02, and the LCPA request was submitted for Commission certification by City Council Resolution No. 20-06-16-02. All relevant resolutions and ordinances are attached as [Exhibit 1](#) of this staff report. Public notices for the hearings were published in the Dana Point News, posted on the City's website, and sent to interested parties.

The City of Dana Point Planning Commission held a public hearing for the LCPA on May 27, 2020. No members of the public provided public comment. On this date, the Planning Commission approved recommendations to adopt Local Coastal Amendment LCPA19-0003/Zone Text Amendment ZTA19-0003, amending Dana Point Harbor Revitalization Plan and District Regulations for Planning Area 3.

The City Council held a public hearing for the resolutions and ordinances associated with the subject LCPA ([Exhibit 1](#)) on September 16, 2020. No members of the public provided public comment. On this date, City Council approved recommendations to adopt LCPA19-0003. On July 21, 2020, a second reading of the ordinance for the Zone Text Amendment ZTA19-0003 was conducted, and no members of the public were present to speak on the item. On this date, the City Council approved the Zone Text Amendment and submission as part of the LCPA for approval and certification by the California Coastal Commission.

On July 29, 2020, the City of Dana Point submitted a request to the Commission to amend its certified LCP filed under LCP-5-DPT-20-0047 (LCPA No. 1-20).<sup>5</sup> On August 10, 2020, after coordination with the City on request for additional information, the Executive Director determined that LCPA No. 1-20 was in proper order and legally adequate to comply with the submittal requirements of the Coastal Act and the California Code of Regulations and was deemed complete pursuant to the requirements of Section 30510 of the Coastal Act. On October 7, 2020, the Commission extended for one year the deadline for Commission action on the LCPA. Under Sections 30511, 30512, and 30517 of the Coastal Act, the time limit for Commission action on the proposed amendment request was December 18, 2021.

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<sup>5</sup> The Commission notes that the proposed LCPA may have been previously filed as LCP-5-DPT-20-0047-2. Per Section 30514(b) of the Coastal Act, a local jurisdiction may not submit more than three major amendments in any given calendar year; LCPA No. 1-20 was the first such major amendment filed with Coastal Commission in 2020. As such, in an effort to administratively systemize sequential numbering for major LCP amendments, all previous filings in reference or associated with LCPA No. 1-20 were renumbered to LCP-5-DPT-20-0047-1.



Meanwhile, on April 30, 2021, the City of Dana Point issued a Notice of Completion (NOC) for a Draft Environmental Impact Report (DEIR) published in connection with the proposed LCPA. Pursuant to 14 CCR § 15086(a)(1), the City of Dana Point sent notification to the Coastal Commission for consultation and request for comment. On July 6, 2021, Coastal Commission staff provided a comment letter to the City of Dana Point (filed under State Clearinghouse No. 2020099024) and is attached to this staff report as [Exhibit 10](#). In parallel, the Executive Director has received public comments regarding the LCPA ([Exhibit 9](#)).

To allow opportunity for continued coordination between Commission staff, County of Orange staff, and the project proponent (R.D. Olson Development) to address public comments and resolve remaining areas of disagreement, City staff found it necessary to withdraw the application. On November 30, 2021, the Commission's South Coast District Office received a formal request for withdrawal from consideration of LCPA Application No. LCP-5-DPT-20-0047-1, and concurrently, the City resubmitted the subject LCPA request under LCP-5-DPT-21-0079-2 (LCPA No. 2-21).

On April 17, 2023, after coordination with the City on requests for additional information, the Executive Director determined that LCPA No. 2-21 was in proper order and legally adequate to comply with the submittal requirements of the Coastal Act and the California Code of Regulations and was deemed complete pursuant to the requirements of Section 30510 of the Coastal Act. On July 13, 2023, the Commission extended for one year the deadline for Commission action on the LCPA. Under Sections 30511, 30512, and 30517 of the Coastal Act, the time limit for Commission action on the proposed amendment request will be August 23, 2024.

### **C. Procedural Requirements**

If the Commission certifies the LCPA as submitted, no further City Council action will be necessary. City staff has indicated that the ordinance will only become final after certification by the Commission, but pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations, no further formal action is required. Should the Commission deny the LCPA, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCPA is not effective, pursuant to Section 13542(f). Should the Commission deny the LCPA, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCPA will become final when the Executive Director reports the determination that the local government's action is legally adequate to the Commission at its next regularly scheduled public meeting. If the City does not accept the suggested modifications within six months of the Commission's action, then the LCPA remains uncertified and not effective within the coastal zone.

## II. MOTIONS AND RESOLUTIONS

Staff is recommending that the Commission approve the LUP amendment if modified and the IP amendment if modified. The Commission must take two separate actions for the LUP amendment and the IP amendment to implement the staff recommendation, resulting in four actions in total.

### A. Denial of LUP Amendment as Submitted

#### Motion I:

I move that the Commission **certify** Land Use Plan Amendment LCP-5-DPT-21-0079-2 as submitted by the City of Dana Point.

Staff recommends a **NO** vote. Passage of this motion will result in rejection of Land Use Plan Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### Resolution to Deny as Submitted:

The Commission hereby denies certification of Land Use Plan Amendment LCP-5-DPT-21-0079-2 as submitted by the City of Dana Point and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

### B. Approval of LUP Amendment with Suggested Modifications

#### Motion II:

I move that the Commission **certify** Land Use Plan Amendment No. LCP-5-DPT-21-0079-2 to the City of Dana Point certified LCP if modified in conformance with the suggested changes recommended by staff.

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Amendment to the Land Use Plan with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### Resolution to Certify if Modified:

The Commission hereby certifies Land Use Plan Amendment LCP-5-DPT-21-0079-2 for the City of Dana Point if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in

conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

### **C. Denial of IP Amendment as Submitted**

#### **Motion III:**

I move that the Commission **reject** Implementation Plan Amendment No. LCP-5-DPT-21-0079-2 to the City of Dana Point certified LCP as submitted.

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

#### **Resolution to Deny as Submitted:**

The Commission hereby denies certification of the Amendment to the Implementation Plan submitted for the City of Dana Point certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

### **D. Approval of IP Amendment with Suggested Modifications**

#### **Motion IV:**

I move that the Commission **certify** Implementation Plan Amendment No. LCP-5-DPT-21-0079-2 to the City of Dana Point certified LCP if modified in conformance with the suggested changes recommended by staff.

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Amendment to the Implementation Plan with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution to Certify if Modified:**

The Commission hereby certifies the Amendment to the Implementation Plan for the City of Dana Point certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications conforms with and is adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### III. SUGGESTED MODIFICATIONS

As a result of coordination efforts with Commission staff, County staff, and the project proponent/developer (R.D. Olson Development), City of Dana Point staff have proposed various modifications to the City Council-adopted version of the LCPA that is shown in [Exhibit 1](#). Some of the changes recommended by City staff are reflected in the suggested modifications, but there are other changes necessary to make the requisite findings that City of Dana Point LCPA Request No. 2-21 is consistent with the standard of review. The City/County/developer have indicated that there may be remaining areas of disagreement, as further indicated in the findings of this staff report. In any case, certification of this LCPA is subject to the suggested modifications below (also included in [Appendix B](#) for ease of read). If the City accepts the suggested modifications within six months of Commission action (i.e., by November 8, 2024), by formal resolution of the City Council, the City's LCPA will become effective once the Executive Director has determined that the City's acceptance of the suggested modifications is legally adequate and has reported such determination to the Commission.

Please note that the following formatting is used for the suggested modifications:

Normal Text= Existing unmodified language

~~Strikethrough Text~~= Proposed language to be removed (City)

Underline Text= Proposed language to be added (City)

~~**Bold Strikethrough Text**~~= Suggested language to be removed (Commission)

**Bold Underline Text**= Suggested language to be added (Commission)

#### Suggested Modification No. 1: Description of Project Components

Modify LUP Sections 2.1 (Overview), 2.2 (Land Use Designations), and 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)) including LUP Policies 5.2.1-2 and 5.2.1-11, IP Sections 6.2 (Principal and other Permitted Uses), 6.5 (Development Standards and Requirements), and IP Statistical Table 17-A, to update the LCPA description based on the most recent discussions between Commission staff, City staff, County staff, and the developer, to ensure that the construction of new market rate rooms is offset through the provision of at least 25 percent of those rooms at lower cost rates, to allow for some flexibility in the final hotel project design in terms of room count/configuration and square footages while requiring that certain amenities are provided and that the lower cost rooms are available for occupancy prior to or at the same time as the higher cost rooms, and requiring that any future modifications to the outlined general project description necessitate another LCPA, as follows:

*LUP Section 2.1, Page 1-2.3, first full paragraph:*

Outside the Commercial Core area, the Dana Point Harbor Revitalization Plan would provide for a number of future improvements (the remaining portion of Planning Area 1 and Planning Areas 3 through 7 [landside] and 8 through 12 [waterside]). Planning Area 3 currently houses one 136-room, lower cost hotel. This hotel may be replaced with a new lower cost hotel pursuant to the LCP policy requirements in Section 5.2 includes the potential for one new hotel

~~with lower cost overnight visitor accommodations with a minimum of 136 rooms. In addition to the replacement lower cost hotel, and a second new market rate hotel with up to 130 market rate rooms, Planning Area 3 also includes the potential for conference facilities, and other visitor serving amenities may be constructed in Planning Area 3 as long as additional lower cost overnight accommodations are provided pursuant to the LCP policy requirements in Section 5.2.~~ Planning Area 3 plans include the potential for a new hotel with conference facilities in addition to providing up to 220 new guest rooms and other visitor serving amenities. [...]

*LUP Section 2.2, Page I-2.6, last incomplete paragraph:*

The Dana Point Harbor Revitalization Plan would allow the future replacement of the existing lower cost Marina Inn with a new lower cost **hotel wherein the number of existing rooms is maintained or exceeded within the new lower cost hotel, and all new rooms are offered at lower cost rates in perpetuity facility;** and thereafter, the **construction operation** of another new market rate hotel, with both hotels located closer to the waterfront than the existing hotel to promote a stronger pedestrian connection to the anticipated Pedestrian Promenade and Festival Plaza.

~~The Dana Point Harbor Revitalization Plan would allow the future renovation or replacement of the existing lower cost Marina Inn with a new lower cost facility located in the present hotel location or relocated closer to the waterfront to promote a stronger pedestrian connection with the anticipated Pedestrian Promenade and Festival Plaza.~~

*LUP Section 5.2, Page I-5.3, first full paragraph:*

The Dana Point Harbor Revitalization Plan contemplates the construction of two new hotels. One hotel will be a lower cost **overnight visitor accommodations and provide no fewer of not less** than 136 lower cost rooms, plus **additional lower cost overnight accommodations or lower cost amenities that may be required.** The lower cost hotel will replace at minimum the 136 rooms of the existing Marina Inn with a new facility located closer to the waterfront to promote a stronger pedestrian connection with the Pedestrian Promenade and Festival Plaza. The lower cost **hotel overnight visitor accommodations** is planned to provide additional guest **in-house** amenities, including an expanded lobby area with guest services, **a communal kitchen microwaves and refrigerators in each guest room**, ground floor beverage service and seating, upper floor beverage and food services and seating, fitness center, retail space, swimming pool, lockers and **self-serve** laundry facilities. **A communal fenced barbecue area may be provided between the lower cost hotel and Island Way.**

The second hotel is **intended to be** market rate and shall provide up to 130 rooms, **in addition to floor area** up to 8,275 square feet of **public restaurant and kitchen space dining area**, up to **68,000** square feet of special function and meeting rooms with a banquet kitchen **available to guests of both hotels**, 600 square feet of ancillary **public** retail space, **and** a 1,700 square foot fitness center, and other

outdoor activity facilities. A minimum of one-quarter (25 percent) of the number of market rate rooms shall be offset by providing lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms). [...]

The Dana Point Harbor Revitalization Plan contemplates the future replacement of the existing Marina Inn with a new facility located in the present hotel location or relocated closer to the waterfront to promote a stronger pedestrian connection with the Pedestrian Promenade and Festival Plaza. The new hotel is planned to provide up to a maximum of 220 guest rooms with full service guest amenities, including expanded lobby area with guest services, 2,750 square foot restaurant, and up to 12,000 square feet of special function and meeting rooms, 500 square feet of ancillary retail space, a 1,500 square foot fitness center, pool and other outdoor activity facilities.

*LUP Section 5.2.1, Page I-5.4, Policy 5.2.1-2:*

5.2.1-2 If demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all 136 demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with a minimum of 136 of equal or lower cost hotel rooms, which shall remain available to the public as lower cost hotel rooms in perpetuity than the existing lower cost units to be demolished. A new and separate market rate hotel of up to 130 rooms may be constructed. The hotels may be constructed concurrently, but the market rate hotel may not open or be operational prior to the opening of the lower cost hotel to the public. To mitigate any absence of lower cost overnight accommodations at the new and separate market rate hotel, additional lower cost overnight accommodations or amenities above the 136 rooms may be required. A minimum of one-quarter (25 percent) of the number of market rate rooms shall be offset by providing lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms). Conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost and construction of any/new additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals. Conversion of any lower cost overnight accommodations, as defined in LUP Policy 5.2.1-21, to anything other than lower cost, replacement of any lower cost overnight accommodations with anything other than lower cost, and construction of any new/additional units that are anything other than the overnight accommodation units heretofore described, shall require a Local Coastal Program Amendment.



*LUP Section 5.2.1, Page I-5.5, Policy 5.2.1-10:*

5.2.1-11-~~1018~~ Future facilities providing overnight accommodations will be located in the area designated as Visitor Serving Commercial (Planning Area 3) by the Dana Point Harbor Land Use Plan.

*IP Section 6.2, Page II-6.1, Item (a):*

a. Lower cost overnight ~~Overnight~~ visitor accommodations ~~not to exceed 220 rooms~~ must provide a minimum of **136 lower cost hotel** rooms, and additional lower cost overnight accommodations ~~or~~ **and** amenities ~~may~~ **shall** be **provided as required to offset the addition of any new market rate rooms.** The second **new market rate** hotel shall not exceed 130 market rate rooms and shall offset the creation of new market rate rooms by providing a minimum of a quarter (25 percent) of the total number of new market rate rooms as lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms).

*IP Section 6.5, Page II-6.7, Item (p):*

p. Replacement of Existing Hotel Units: In the event that demolition of the existing lower cost overnight visitor accommodations (presently called the Marina Inn) are is proposed, all 136 demolished units shall be replaced in the area designated as Visitor Serving Commercial in the Dana Point Harbor Land Use Plan with 136 units that are of equal or lower cost in perpetuity than the existing lower cost units to be demolished. A new and separate market rate hotel of up to 130 rooms may be constructed. If the ~~second~~ **new** market rate hotel **does not provide a minimum of 25 percent of new accommodations has no lower cost overnight** on site at lower cost, additional lower cost rooms, ~~lower cost overnight visitor accommodations or~~ **and no-cost** amenities ~~may~~ **shall** be required to be provided in the new lower cost overnight accommodations hotel **or market rate hotel, with the number of new lower cost rooms provided equal to a quarter (25 percent) of the total number of new market rate rooms.** ~~In the event that demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) are proposed, all demolished units shall be replaced in the area designated as Visitor Serving Commercial in the Dana Point Harbor Land Use Plan with units that are of equal or lower cost than the existing lower cost units to be demolished. Conversion of any existing units to high cost, replacement of any existing with anything other than lower cost units or construction of any new/additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals. Conversion of any lower cost overnight accommodations, as defined in LUP Policy 5.2.1-21, to anything other than lower cost, replacement of any lower cost overnight accommodations with anything other than lower cost, and construction of any new/additional units that are anything other than the overnight accommodation units heretofore described, shall require a Local Coastal Program Amendment.~~

IP Section 17.3, Page II-17.4, Statistical Table 17-A:

DANA POINT HARBOR REVITALIZATION PLAN STATISTICAL TABLE 17-A\*

Land Use Category	Planning Area	Gross Acreage	Estimated Existing Square Footage	Maximum Square Footage (1)
Visitor-Serving Commercial <del>Select Service</del> Lower Cost Hotel/Motel	3	9.5	136 rooms	<del>136 To Be Determined</del>
				<u>220 rooms + 25% of market rate rooms</u>
- Function / Meeting			2,000	12,000
- Restaurant/ Food Service				<u>4,200</u> 2,750
- Accessory Retail				<u>350</u> 500
- Fitness / Health Center			450	<u>700</u> 1,500
<b><u>Market Rate (High-Cost) Hotel</u></b>				<u>130 rooms</u>
- Function / Meeting				<u>8,000</u>
- Restaurant/ Food Service				<u>8,275</u>
- Accessory Retail				<u>600</u>
- Fitness / Health Center				<u>1,700</u>
Boater Service Building 2			3,600	4,000
Boater Service Building 3			3,600	<u>3,000</u> 8,800
Boater Service Building 4			5,000	<u>3,800</u> 7,000
Planning Area 3 Subtotals		9.5	8,600	<u>28,625</u> <del>31,360</del> (3)

FootnNotes: (1) Maximum Square Footage includes existing buildings to remain  
 (2) May include a Marine Retail Store  
 (3) For hotel, square footage subtotal includes ancillary uses only  
 (4) Includes OC Dana Point Harbor offices on the upper floor  
 (5) Boater Service Buildings in Planning Area 3 may be incorporated within hotel buildings  
**(6) The lower cost hotel rooms that constitute 25% of the number of market rate rooms may be incorporated within the lower cost hotel or the market rate hotel**

### Suggested Modification No. 2: Lower-Cost Room Facilities

Modify LUP Section 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)), including LUP Policy 5.2.1-4, and IP Section 6.5 (Development Standards and Requirements) to detail the in-house facilities made available to the guests of the lower cost rooms and to delete the option for dormitory or hostel-style accommodations, as follows:

*LUP Section 5.2, Page I-5.3, second full paragraph:*

The final design of the lower cost overnight visitor accommodations may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations, All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-serve washers and dryers, and dormitory or hostel style accommodations. A majority of rooms would have private decks, juliette balconies, or full balconies for guests to take advantage of the views and oceanfront climate.

In addition to traditional hotel accommodations, the proposed hotel may include suites (up to 20 percent of the total number of rooms) that provide families with a bedroom, living area, dining rooms, kitchens, clothes washers and dryers. The final design of the hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations. The new hotel rooms would have private decks or balconies for guests to take advantage of the views and oceanfront climate. These suites would be intended to encourage longer visitor stays, particularly for families with children.

*LUP Section 5.2.1, Page I-5.4, Policy 5.2.1-4:*

**5.2.1-4 Harbor visiting serving and overnight accommodations (Planning Area 3) will be enhanced by potential remodeling and/or replacement (if remodeling isn't feasible) of the hotel complex to potentially include conference and recreational facilities in addition to providing up to 220 new guest rooms and amenities.**

5.2.1-4 The design of the lower cost overnight visitor accommodation hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations, All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-serve clothes washers and dryers to encourage longer visitor stays, particularly for families with children. Dormitory or hostel style accommodations may also be provided in addition to the lower cost overnight visitor accommodations provided as rooms.

*IP Section 6.5, Page II-6.7, Item (q):*

q. Longer Visitor Stays: The design of some of the lower cost overnight visitor accommodations hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations, All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-service clothes washers and dryers, to encourage longer visitor stays, particularly for families with children. Dormitory or hostel-style accommodations may also be provided in addition to the minimum of 136 lower cost accommodation rooms. The design of any renovated or new hotel in addition to traditional guest accommodations may encourage longer visitor stays, particularly for families with children, by providing up to twenty percent (20%) of the total number of rooms with guest amenities in

~~addition to a bedroom, that includes a living area, dining room, kitchen, clothes washers and dryers. Some hotel rooms may provide accommodations for larger groups by offering connections to adjoining rooms or allowing multiple bedroom suites.~~

### **Suggested Modification No. 3: Lower-Cost Room Rates**

Modify LUP Section 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)) and add LUP Policies 5.2.1-16 (in part), 5.2.1-21, and 5.2.1-23 to clarify the requirements for the lower cost rates and extracurricular recreational amenities associated with the lower cost rooms, and if the lower cost rooms are offered at the existing Marina Inn rates, additional stipulations for overnight programming are added, as follows:

*LUP Section 5.2, Page I-5.4, before first full paragraph and immediately after **Suggested Modification No. 5** stating, “The total value of contributions to these programs shall equal or exceed \$110,000 annually, and the hotels shall ensure adequate transportation for program attendees.”:*

**[...] Additionally, if the lower cost replacement hotel will offer room rates higher than three-quarters (75 percent) of the peak season (average of July and August) statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons, but equal to or less than the 2022 annualized average daily rate of the existing Marina Inn (adjusted for inflation using CPI), then the hotel development shall maximize the public’s access to lower cost overnight accommodations on the coast by directly providing or funding lower cost overnight programming at no cost for underserved youth and their families, such as partnering with the Ocean Institute and/or OC Sailing and Events Center to provide a free coastal-themed overnight camping experience to underserved youth, expanding and upgrading lower cost overnight accommodation facilities at the OC Sailing and Events Center and/or Ocean Institute, providing hospitality internships, or any combination thereof.**

**The hotels in Planning Area 3 shall directly offer kayak, paddle board, bicycle, and similar recreational rentals at no or discounted costs to guests of the lower cost rooms; alternatively, collaboration with nearby businesses or co-operatives may be allowed. [...]**

*LUP Section 5.2.1, Page I-5.5, add Policies 5.2.1-16 (in part), 5.2.1-21, and 5.2.1-23:*

**5.2.1-16 The hotels in Planning Area 3 shall directly offer kayak, paddle board, bicycle, and similar recreational rentals at no or discounted costs to guests of the lower cost rooms; alternatively, collaboration with nearby businesses or co-operatives may be allowed. [...]**

**5.2.1-21 Pursuant to LUP Policy 5.2.1-2, the maximum average daily rate of the replacement hotel shall be equal to or less than the existing Marina Inn’s annualized average daily rate for the year 2022 adjusted once annually for inflation using the Consumer Price Index (CPI). The rates of the lower cost**

rooms used to offset the market rate rooms shall be equal to or less than three-quarters (75 percent) of the peak season (average of July and August) statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons.<sup>[Footnote]</sup> All lower cost and moderate cost overnight accommodations shall be subject to annual Coastal Commission reporting and auditing requirements, as conditioned in a future local coastal development permit. If any replacement hotel rooms are proposed to be priced equal to or less than the 2022 annualized average daily rate of the existing hotel (adjusted for inflation using CPI) but higher than three-quarters (75 percent) of the peak season statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons, then the proportional difference between the rates, in conjunction with site-specific construction cost estimates for these rooms, shall determine the monetary value of the benefits necessary to offset the higher room rates.<sup>[Footnote]</sup> The monetary value shall only be used to fund programming as indicated in LUP Policy 5.2.1-23 and shall not be accepted as a simple payment of an in-lieu fee.

[Add footnote to bottom of page] The maximum rate shall be calculated as such: ((number of occupants in room) – 2) \* 0.1 = “occupancy allotment”; therefore, (Σ ([75% of peak-season statewide ADR] \* (1 + [occupancy allotment]) \* [number of rooms]) / [total number of lower cost rooms] = “maximum rate.”

[Add footnote to bottom of page] The rate differential offset shall be calculated as such: ([Actual ADR of replacement units (no higher than Marina Inn 2022 annualized ADR + CPI)] – [75% of peak-season statewide ADR + 10% increase per occupant above 2 guests]) / [75% of peak-season statewide ADR + 10% increase per occupant above 2 guests] = “markup,” and [site-specific construction costs of lower cost rooms] \* [number of required lower cost rooms] = “in-lieu fee”; therefore, [markup] \* [in-lieu fee] = “rate differential offset.”

5.2.1-23 If required per LUP Policy 5.2.1-21, in lieu of offering lower cost room rates for the replacement lower cost rooms, the hotel(s) shall directly provide or fund lower cost overnight programming at no cost for underserved youth and their families, such as partnering with the Ocean Institute and/or OC Sailing and Events Center to provide a free overnight camping experience located on the coast to underserved youth, expand and upgrade lower cost overnight accommodation facilities at the OC Sailing and Events Center and/or Ocean Institute, provide hospitality internships, or any combination thereof.

## **Suggested Modification No. 4: Boater Parking and Service Facilities**

Modify LUP Sections 2.2 (Land Use Designations) and 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)), including LUP Policy 5.2.1-9, to explain that the hotel redevelopment must retain sufficient boater parking and retain services and fixtures in the boater service facilities of existing quality and quantity, as follows:

LUP Section 2.2, Page I-2.7, first full paragraph:

The boater facilities located adjacent to the revitalized Commercial Core and hotels would be allowed to be reconfigured to provide a linear park. Other enhancements to the boater facilities include upgrades to restrooms and laundry facilities, **expansion consolidation of office space square footage** and the reconfiguration of surface parking areas. Associated with the design of the hotel, several boater service buildings may be relocated, and/or **replaced incorporated within the hotel buildings. Changes in the square footage of the boater service buildings may be allowed, so long as the quality and quantity of the services and fixtures provided are preserved in proportion to observed boater use.**

LUP Section 5.2, Page I-5.3, first full paragraph and immediately after **Suggested Modification No. 1** stating, “The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms).”:

[...] **Either Wwithin or adjacent to the market rate hotel structure, boater service facilities of not less than 6,800 square feet will be provided, and parking designated for boaters will be provided, consistent with off-street parking standards and regulations set forth in the Dana Point Harbor Revitalization Plan & District Regulations.**

LUP Section 5.2, Page I-5.3, fourth full paragraph, second sentence:

[...] The hotel's building design would also **emphasize provideing** adequate parking for guests and maintaining convenient access to parking areas for boaters, **consistent with off-street parking standards and regulations set forth in the certified Dana Point Harbor Revitalization Plan & District Regulations.** [...]

LUP Section 5.2.1, Page I-5.5, Policy 5.2.1-9:

5.2.1-9-**810** The hotel building design shall **emphasize provideing** adequate parking for guests and **free parking for hotel employees, as well as** maintain convenient access to parking areas for boaters, **consistent with off-street parking standards and regulations set forth in Chapter 14 of the Dana Point Harbor Revitalization Plan & District Regulations.**

## **Suggested Modification No. 5: Public Access and Recreation**

Modify LUP Section 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)), including LUP Policies 5.2.1-1 and 5.2.1-7, and add LUP Policies 5.2.1-16 (in part), 5.2.1-17, 5.2.1-20, and 5.2.1-22 to enumerate the necessary public community benefits necessary to offset the adverse impacts on public access and recreation resulting from the development of privately-operated hotel uses in the Dana Point Harbor and on public trust tidelands, as follows:

LUP Section 5.2, Page I-5.3, third full paragraph:

The Dana Point Harbor Revitalization Plan anticipates at some time in the future, plans will be prepared by interested parties to replace the existing Marina Inn.

Conceivably, any future plans, in addition to offering overnight accommodations would also include ancillary services, **including some open for public use,** intended to enhance the financial viability of the facility and attract patrons **and members of the general public.**

*LUP Section 5.2, Page I-5.3, after last incomplete paragraph:*

**Community benefits shall be included as part of the replacement of the existing hotel complex in Planning Area 3. As part of the Harbor revitalization coastal development permit (CDP No. 5-19-0971), an education and sailing program for underserved youth<sup>[Footnote]</sup> is required per Special Condition 26. The program sets forth the provision of scholarships for underserved youth to participate in educational curricula for sailing, paddle boarding, swimming, surfing, bodyboarding, and/or kayaking, and a minimum of 10% of eligible students are provided the opportunity to participate in a hands-on, multi-day sailing experience. To complement these initiatives, the hotels planned for Planning Area 3 shall participate in these, or similar, programs annually, for the life of the hotel development, by contributing financially to expand and/or improve existing programming for underserved youth in Dana Point Harbor as required by the Harbor revitalization CDP. The hotels shall also directly participate in additional public access and recreational programs for underserved communities for the life of the hotel development as required in LUP Policy 5.2.1-22. The total value of contributions to these programs shall equal or exceed \$110,000 annually, and the hotels shall ensure adequate transportation for program attendees.**

[Add footnote to bottom of page] **The term “underserved youth” shall be defined as individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.**

*LUP Section 5.2, Page I-5.4, before first full paragraph and immediately after **Suggested Modification No. 3** stating, “The hotels in Planning Area 3 shall directly offer kayak, paddle board, bicycle, and similar recreational rentals at no or discounted costs to guests of the lower cost rooms; alternatively, collaboration with nearby businesses or co-operatives may be allowed.”:*

**[...] The hotel site shall provide a new designated launch location for hand-carry watercraft open and available to the public at no cost near the intersection of the Pedestrian Promenade and Island Way or at the nearest suitable location; or, alternatively, the hotel shall provide and conspicuously advertise free transport hotel guests and their hand-carry watercraft to the existing launch site at Baby Beach. To increase public enjoyment of the Harbor, the hotel operators shall also construct and maintain, in perpetuity, at least one free public viewing station along Island Way, with accessory seating, telescopes, and signage that clearly indicates public access and**



**provides educational components. All public access signage shall be provided in multiple languages. Other public access ways and points required by the Local Coastal Program shall be identified in a Public Access Management Plan for Planning Area 3 and provided for in concert with redevelopment of the site.**

*LUP Section 5.2.1, Page I-5.4, Policy 5.2.1-1:*

**5.2.1-1 Harbor visitor serving and overnight accommodations (Planning Area 3) will be enhanced by potential replacement and/or remodeling of the hotel complex with two new hotels to include conference and recreational facilities and amenities, as well as beverage/food and retail service that is available to the general public.**

*LUP Section 5.2.1, Page I-5.5, Policy 5.2.1-7:*

**5.2.1-7 The design of hotel rooms shall incorporate wherever possible the use of private decks, juliette balconies, or full balconies to allow guests to take advantage of the Harbor views and enjoy the oceanfront climate. To maximize the general public's access to views and enjoyment of the oceanfront climate, seating on common roof decks or terraces shall be open and free for the public to use at a minimum during hours of beverage/food service.**

*LUP Section 5.2.1, Page I-5.5, add Policy 5.2.1-17:*

**5.2.1-17 The hotel site shall provide a new designated launch location for hand-carry watercraft open and available to the public at no cost near the intersection of the Pedestrian Promenade and Island Way or at the nearest suitable location; or, alternatively, the hotel shall provide and conspicuously advertise free transport of hotel guests and their hand-carry watercraft to the existing launch site at Baby Beach. Other public access ways and points required by the Local Coastal Program shall be identified in a Public Access Management Plan for Planning Area 3 and provided for in concert with redevelopment of the site. All public access signage shall be provided in multiple languages.**

*LUP Section 5.2.1, Page I-5.5, add Policy 5.2.1-20:*

**5.2.1-20 Community benefits shall be included as part of the replacement of the existing hotel complex. Specific community benefit initiatives shall be included as conditions of approval for the requisite coastal development permit to replace the hotel complex. Any community benefits shall include or expand further on the programs described in LUP Policies 5.2.1-22 (related to public access and recreation) and 5.2.1-23 (related to lower cost overnight accommodations), and shall also enumerate specific benefits to underserved individuals and communities within the County of Orange. The total value of contributions to these programs shall equal or exceed \$110,000 annually in total for the life of the hotel development.**

*LUP Section 5.2.1, Page I-5.5, Policy 5.2.1-22:*

**5.2.1-22 To complement existing Harbor initiatives for underserved youth, <sup>[Footnote]</sup> the hotels planned for Planning Area 3 shall participate in programs**

**for underserved youth annually, for the life of the hotel development, by contributing financially to expand and/or improve existing programming for underserved youth in Dana Point Harbor required by Coastal Development Permit (CDP) No. 5-19-0971. The hotels shall also directly participate in additional public access and recreational programs for underserved communities (such as those providing no-cost or low-cost boating and recreational activities within the harbor, sailing education for disabled persons, ocean access education for Title 1 students, exercise for fixed income seniors, indigenous land stewardship, or partnering with a local WHALE TAIL® grant recipient to provide annual community barbecues (food and beverage) at no cost). The hotels shall ensure adequate transportation for attendees of all programs.**

[Add footnote to bottom of page] **The term “underserved youth” shall be defined as individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.**

## **Suggested Modification No. 6: Visual Resources**

Modify LUP Section 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)), including LUP Policy 5.2.1-8, and add LUP Policy 5.2.1-9 (in part) to discuss the requirements and mitigation measures necessary to address adverse impacts to visual resources resulting from the proposed hotel development, as follows:

*LUP Section 5.2, Page I-5.3, fourth full paragraph, first sentence:*

The architectural character of the hotels will need to be compatible with the California Coastal theme of the new planned Commercial Core, possibly including terraced levels of buildings in various configurations to maximize views and break up building massing as viewed from surrounding vantage points. **The design shall preserve view corridors as seen from Dana Point Harbor Drive towards the Harbor, between the two hotel buildings, and through Casitas Place, to the maximum extent feasible. Tree removal shall be minimized, shall not be used to enhance private views or to offset impacts to public views, and shall require mitigation as required by the Local Coastal Program. [...]**

*LUP Section 5.2.1, Page I-5.5, Policy 5.2.1-8:*

5.2.1-8<sup>7</sup> The design of the hotel will be compatible with the California Coastal design theme of the Commercial Core area and terraced levels of buildings in various configurations to maximize public views and break up building massing as viewed from the surrounding public vantage points shall be encouraged as part of the design. **The design shall preserve view corridors as seen from Dana Point Harbor Drive toward the Harbor, between the two hotel buildings, and through Casitas Place, to the maximum extent feasible. To increase public enjoyment**

**of the Harbor, the hotel operators shall also construct and maintain, in perpetuity, at least one free public viewing station along Island Way, with accessory seating, telescopes, and signage that clearly indicates public access and provides educational components.**

*LUP Section 5.2.1, Page I-5.5, immediately after **Suggested Modification No. 7** stating in new Policy 5.2.1-9, “The development shall minimize and control runoff and wastewater discharges, and water conservation or reclamation measures are encouraged when in accordance with all relevant local and state policies.”:*

**5.2.1-9 [...] Tree removal shall be minimized, shall not be used to enhance private views or to offset impacts to public views, and shall require mitigation as required by LUP Policy 7.1.2-3 and IP Chapter 21.**

### **Suggested Modification No. 7: Development Standards/Requirements**

Modify LUP Section 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)), renumber LUP Policy 5.2.1-9 to 5.2.1-11, and add new LUP Policies 5.2.1-8, 5.2.1-9, 5.2.1-12 through 5.2.1-15, and 5.2.1-19 to require various development standards for the proposed hotel development related to the protection of water quality and marine resources, provision of non-automobile transit options and minimization of vehicle miles traveled and energy consumption, and reduction of risk from coastal hazards exacerbated by sea level rise, as follows:

*LUP Section 5.2, Page I-5.3, fourth full paragraph, before the second sentence and immediately after **Suggested Modification No. 6** stating, “Tree removal shall be minimized, shall not be used to enhance private views or to offset impacts to public views, and shall require mitigation as required by the Local Coastal Program.”:*

**[...] Landscaping and plant palette selection on the hotel site shall consist entirely of low-water, non-invasive, drought-tolerant vegetation, consistent with the landscaping provisions of the Local Coastal Program. The development shall minimize and control runoff and wastewater discharges, and water conservation or reclamation measures are encouraged when in accordance with all relevant local and state policies.**

*LUP Section 5.2, Page I-5.3, fourth full paragraph:*

**[...] A parking deck with access directly from Dana Point Harbor Drive, Casitas Place or the Commercial Core area may also be considered as part of the overall hotel design to separate the main guest entrances from service and delivery functions. Hotel operators shall provide hotel guests with access to a free on-demand regional service shuttle connecting to a public regional trolley or public transportation service, and hotel employees who take public transit to work shall receive fully subsidized public transit passes. Electric vehicle (EV) charging stations and parking stalls shall be allocated throughout both hotel parking areas; in addition, onsite bicycle parking shall be provided, including racks and charging stations available to accommodate electric bicycles and scooters. To reduce long-term operation emissions from area sources, the hotel design shall implement energy conservation measures, such as roof-**

**mounted solar panels, energy-efficient and bird/marine environment-safe lighting, fixtures, and appliances. Hotel operations shall minimize plastic consumption, waste, and litter. The two new hotels shall be sited, designed, and constructed in a manner that does not adversely impact public access and that prevents flood damage and seawater intrusion from sea level rise over the course of their life spans, consistent with the development and sea level rise policies of the Local Coastal Program and the Coastal Act, and as informed by the best available science.**

*LUP Section 5.2.1, Page I-5.5, add Policies 5.2.1-8 and 5.2.1-9, renumber Policy 5.2.1-9 (to 5.2.1-11), and add Policies 5.2.1-12 through 5.2.1-15 and 5.2.1-19:*

**5.2.1-8 Where glass or other clear material is used for guardrails or other architectural features, it shall be etched, tinted, or otherwise modified to make it visible to birds to prevent bird strikes.**

**5.2.1-9 Landscaping and plant palette selection on the hotel site shall consist entirely of low-water, non-invasive, drought-tolerant vegetation, consistent with the landscaping provisions of the Local Coastal Program. The development shall minimize and control runoff and wastewater discharges, and water conservation or reclamation measures are encouraged when in accordance with all relevant local and state policies. [...]**

[...] **5.2.1-911** A parking deck with access directly from Dana Point Harbor Drive, Casitas Place or the Commercial Core area may be considered as part of the overall hotel design to separate the main guest entrances from service and delivery functions.

**5.2.1-12 Hotel operators shall provide hotel guests with access to a free on-demand regional service shuttle connecting to a public regional trolley or public transportation service, and hotel employees who take public transit to work shall receive fully subsidized public transit passes.**

**5.2.1-13 Electric vehicle (EV) charging stations and parking stalls shall be allocated throughout both hotel parking areas in accordance with minimum CALGreen standards. The charging stations shall be available for use by the general public and provide multi-lingual signage to indicate this availability, shall provide multiple options for form of payment, and shall provide charging connectors and/or adapters to support the broadest charging access for various EVs possible. In addition, onsite bicycle parking shall be provided consistent with the requirements of the Local Coastal Program, including racks and charging stations available to accommodate electric bicycles and scooters.**

**5.2.1-14 To reduce long-term operation emissions from area sources, the hotel design shall implement energy conservation measures, such as roof-mounted solar panels, energy-efficient and bird/marine environment-safe lighting, fixtures, and appliances.**

**5.2.1-15 Hotel operations shall minimize plastic consumption, waste, and litter. Coordination of a Marine Debris Reduction Program is required, as is membership or certification via an established program. The Marine Debris Reduction Program shall ensure measures to avoid and divert food waste. [...]**

**[...] 5.2.1-19 The two new hotels shall be sited, designed, and constructed in a manner that does not adversely impact public access and that prevents flood damage and seawater intrusion from sea level rise over the course of their life spans, consistent with the development and sea level rise policies of the Local Coastal Program and the Coastal Act, and as informed by the best available science. Future adaptation measures may be necessary consistent with any recommendations put forth by the City in the Shoreline Management Plan (or updates thereto) as required per LUP Policy 8.6.3-1 and IP Chapter 3.**

## **IV. FINDINGS FOR DENIAL AS SUBMITTED & APPROVAL IF MODIFIED AS SUGGESTED**

### **A. Amendment Description and Background**

The City of Dana Point (“City”) is requesting Local Coastal Program (LCP) Amendment No. 2-21 to the Land Use Plan (LUP) and Implementation Plan (IP) portions of its certified LCP (i.e., Dana Point Harbor Revitalization Plan & District Regulations) to allow for the replacement of the existing hotel (Marina Inn) with a new lower-cost hotel and the construction of a new market rate hotel in Planning Area 3 (PA 3) of the Dana Point Harbor, an area which comprises approximately 9.5 acres of public tidelands (APNs: 682-022-05, 682-022-01, and a portion of 682-022-16) with a land use designation of Visitor Serving Commercial (VSC) and zoned Dana Point Harbor Planned Community (DPHPC) ([Exhibit 2](#)). In addition, the City is requesting reconfiguration of the boater service buildings and parking areas within PA 3.

PA 3 currently houses the Marina Inn, which Great Western Hotels built in 1970 as a three-story, 80-room hotel intended for Orange County residents looking for a weekly vacation destination. In 1974, 68 rooms were added to create the configuration of the current facility. As described in the certified LUP, at the time that the hotel was constructed, the County expressly did not want to include retail or food service as part of the hotel to encourage guests to visit businesses and restaurants in the nearby Mariner’s Village and Dana Wharf areas. The Marina Inn presently provides lower-cost to moderate-cost overnight accommodations consisting of a total of 136 guest rooms and limited guest amenities that includes an outdoor pool and deck area, three meeting rooms totaling approximately 2,000 sq. ft., and a small lobby ([Exhibit 3](#)). Adjacent to the Marina Inn and to the docks of the East Marina are three boater service buildings (Numbers 2, 3, and 4) which provide boater restrooms, showers, laundry facilities (including clothes washers and dryers), and office space for yacht brokers ([Exhibit 3](#)). Boater Service Buildings 2 and 3 are collectively approximately 3,600 sq. ft. in size, and Boater Service Building 4 is 5,000 sq. ft. in size. PA 3 currently has a total parking capacity of 623 vehicles, including a 178-space portion of the parking area located immediately adjacent to the East Marina that is dedicated boater parking ([Exhibit 3](#)). Some areas immediately adjacent to the boater service buildings have also been equipped with storage racks for hand launch vessels. A portion of the boater parking area is used on a regular basis to accommodate ferry passengers to Catalina Island.

The existing LCP language contemplates the future replacement of the existing Marina Inn with a new facility located in the present hotel location or relocated closer to the waterfront to promote a stronger pedestrian connection with the nearby Pedestrian Promenade and Festival Plaza. The certified LCP allows for a future hotel with a maximum of 220 guest rooms with full-service guest amenities, including expanded lobby area with guest services, a restaurant, special function and meeting rooms, ancillary retail space, a fitness center, a swimming pool, and other outdoor activity facilities. The existing language details square footage measurements for the various hotel components, and it also encourages various hotel room configurations and designs, such as multiple bedroom suite

accommodations, connections between adjoining rooms, and in-house facilities like kitchens, dining rooms, laundry services, and decks/balconies.

Existing LUP Policy 5.2.1-2 states that, “If demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with units that are of equal or lower-cost than the existing lower-cost units to be demolished.” An LCPA is required if a future plan deviates from the existing requirements of the LCP, including “conversion of any existing units to high cost, replacement of any existing units with any other than lower cost, and construction of any new/additional units that are anything other than lower cost units.”

This LCPA request is driven by a proposal put forth by the project proponent/developer R.D. Olson Development. Pursuant to the California Environmental Quality Act (CEQA), the City issued a Notice of Completion (NOC) for a Draft Environmental Impact Report (DEIR) prepared in connection with the submitted LCPA and project proposal (filed under State Clearinghouse No. 2020099024). As envisioned by the developer, the 2021 EIR describes the demolition of the existing Marina Inn and construction of the “Surf Lodge,” a four-story, 56,896 sq. ft. structure providing 139 lower-cost guest rooms and associated amenities, and the “Dana House Hotel,” a four-story, 125,026 sq. ft. structure that includes 130 market rate guest rooms, underground parking, direct access on the podium level to a new 6,800 sq. ft. boater service facility that contains 3,800 sq. ft. of ancillary space for boaters and 3,000 sq. ft. of meeting space/marina office. The Surf Lodge would have improved access to Island Way and Dana Point Harbor Drive to the west, and the Dana House Hotel would involve landscaping improvements and new pedestrian connections to the adjacent Festival Plaza and Pedestrian Promenade along the East Cove Marina bulkhead. The most recent proposed project plans are attached as [Exhibit 4](#).

The City’s proposed LCPA language generally seeks to support the developer’s stated project scope with minor modifications. In summary, the LCPA, as submitted, would remove the existing language providing for a 220-room future hotel and instead authorize a new hotel with a minimum of 136 rooms to replace the existing Marina Inn, in addition to a new market rate hotel with up to 130 rooms ([Exhibit 1](#)). The City’s proposed language specifies that the replacement hotel (Surf Lodge) would be offered at the same rates as the existing Marina Inn and would provide additional guest amenities such as a lobby area with guest services, a communal kitchen, various beverage service and seating areas, a fitness center, retail space, a swimming pool, lockers, and laundry; the market rate hotel (Dana House Hotel) would have restaurant and kitchen space, special function and meeting rooms with a banquet kitchen, ancillary retail space, a fitness center, other outdoor activity facilities, and a boater service facility incorporated within an area of no less than 6,800 sq. ft. The City also includes additional details about the various facilities/appliances that are included in the rooms (e.g., refrigerators, microwaves, balconies) and allows for various room designs such as multi-room suites, dormitory or hostel-style accommodations, and connections between adjoining rooms.

To this end, the LCPA request includes changes to Sections 1.1 (Description of Dana Point Harbor Revitalization Plan), 2.1 (Overview), 2.2 (Land Use Designations), and 5.2 (Overnight Visitor Accommodations and Recreational Facilities (R)) of the LUP, as well as



Sections 6.2 (Principal and Other Permitted Uses) and 6.5 (Development Standards and Requirements) of the IP. The City also updates the square footage figures for the various project components in Statistical Table 17-A of the IP ([Exhibit 1](#)). The LCPA will not implicate adjacent planning areas (Planning Areas 2, 4, and 10), but the proposed hotel development will integrate with ongoing improvements to the Harbor under Coastal Development Permits (CDPs) Nos. 13-0018(I) (Commercial Core) and 5-19-0971 (Harbor Revitalization), approved by the City and Commission, respectively.

As discussed in greater detail in Section IV.B (Lower-Cost Overnight Accommodations) of this staff report, Commission staff asked City staff and the developer to perform financial feasibility analyses to support the chosen proposal of 136 lower-cost rooms and 130 market rate rooms as compared to other potential project alternatives. Based on the results of the studies and additional Commission staff inquiries, City staff, at the behest of the developer, modified the project proposal several times. For instance, at one point the City and developer considered dormitory or hostel-style rooms in order to provide additional lower-cost overnight accommodations onsite. Later, the proposal reverted to what was initially submitted under this LCPA, with a 136-room lower-cost hotel and a 130-room market rate hotel, except that the developer would pay a fee of \$4,704,401 in lieu of providing additional lower-cost overnight accommodations directly onsite. After Commission staff expressed concern, the most recent project proposal has been once again revised to include additional lower-cost overnight accommodations onsite as described in the following section.

The full text of the City's proposed LCPA language can be found in [Exhibit 1](#) and in [Appendix B](#). Many of the substantive suggested modifications considered above reflect a combined effort by Commission staff, City staff, County staff, and the developer to ensure that the LCPA conforms with the policies of the Coastal Act. Nonetheless, there are remaining areas of disagreement which are discussed later in this report.

## **B. Lower-Cost Overnight Accommodations**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states:

Lower-cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, hotel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income

persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

The relevant policies of the City of Dana Point LCP (including LUP Policies 5.2.1-1 through 5.2.1-11) are shown in [Exhibit 1](#) and [Appendix B](#).

The Coastal Act and existing LCP policies identify public recreational access—especially recreation for the visiting public—as a critically important resource that requires protection and maximization. Many visitors live in inland areas, where a coastal trip may require a lengthy car, train, or bus ride. For many low- and moderate-income visitors, affordable lodging is essential for meaningful access to the California coast. As such, Section 30210 of the Coastal Act requires public access and recreation opportunities to be maximized for all people, including those who do not (and/or cannot afford to) live near the coast. Section 30213 additionally requires permitted development to protect, encourage and, where feasible, provide lower-cost visitor and recreational facilities. In numerous past actions, the Commission has applied this policy to protect, and require provision of, lower-cost overnight accommodations in relevant development projects.

### **Trends in Coastal Overnight Accommodations**

The Commission has approved new hotel developments along the coastline as high-priority visitor-serving facilities—however, high room rates can render these visitor-serving hotels exclusive.<sup>6</sup> As such, the Commission has approved projects and LCP amendments requiring development of overnight accommodations with facilities serving a range of incomes.<sup>7</sup> In some past actions where the proposed development failed to facilitate a range of affordability onsite, the Commission alternatively required payment of an in-lieu fee to fund construction of lower-cost overnight accommodations offsite, including hostels, recreational vehicle (RV) parks, and campgrounds.<sup>8</sup>

In November 2016, Commission staff presented a comprehensive study of lower-cost visitor accommodations eliminated from the coastal zone since 1989.<sup>9</sup> The study found that, out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms were lost without replacement. Comparatively, 11,247 rooms were

<sup>6</sup> [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

<sup>7</sup> [HNB-MAJ-2-06](#) (Huntington Beach-Timeshares); [A-6-PSD-8-04/101](#) (San Diego-Lane Field); [A-5-RPV-2-324](#) (Rancho Palos Verdes-Long Point); [RDB-MAJ-2-08](#) (Redondo Beach); [SBV-MAJ-2-08](#) (Ventura); [5-98-156-A17](#) (Long Beach-Pike Hotel); [LOB-MAJ-1-10](#) (Long Beach-Golden Shore); [A-5-VEN-21-0011](#) (Wynkoop Properties, LLC); [A-5-LGB-21-0060](#) (Pacific Edge Hotel), and [5-18-0872](#) (Sunshine Enterprises LP).

<sup>8</sup> [5-18-0872](#) (Shore Hotel); [6-13-0407](#) (McMillin-NTC, LLC); [5-14-1785](#) (Olson Real Estate Group, Inc.); [A-6-ENC-22-0049](#) (Encinitas Beach Land Venture I, LLC), [5-20-0597](#) (Franco), and [5-21-0139](#) (Ocean Avenue LLC).

<sup>9</sup> [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

eliminated from the other five cost categories combined. These survey results indicate that nearly 70% of all hotel rooms eliminated from the coastal zone between 1989 and 2016 were economy rooms, whereas less than 10% of the rooms lost were in the upscale and luxury categories, and less than 0.2% have been lost in the luxury category. Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, lower-cost hotels, camping, and hostel opportunities are in high demand in coastal areas.<sup>10</sup> There is an ongoing need to provide more affordable lodging along California's coast.

Despite being a very significant visitor-serving destination, Dana Point has limited facilities within its coastal zone that offer lower-cost overnight accommodations for visitors. In 2022, the City estimated that there are 284 existing lower-cost overnight accommodation units (164 standard hotel rooms and 120 campground spaces) in the City's coastal zone, and 65 lower-cost overnight accommodation units (13 standard hotel rooms and 52 hostel beds) that are pending construction.<sup>11</sup> However, the City estimated that there are 1,909 existing market rate hotel rooms in the City's coastal zone. In other words, assuming that all pending lower-cost overnight accommodation units are built, and assuming a 2:1 hostel bed to standard room ratio,<sup>12</sup> lower-cost overnight accommodations would only consist of 14.5% of the total overnight accommodations inventory in the City's coastal zone (or 9.6%, if excluding publicly-operated state campground facilities). Additionally, it appears that certain lower-cost overnight accommodations have recently closed and will be converted to high-cost accommodations (e.g., Sea Side Inn),<sup>13</sup> and a significant bulk of the available lower-cost units in the City's coastal zone are the 136 existing rooms at the Marina Inn, which is the subject of this LCPA. Aside from the planned project for the Marina Inn replacement, the City has not identified other sites suitable for new or replacement lower-cost overnight lodging within or near the City's coastal zone.

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<sup>10</sup> Per the State Coastal Conservancy's [2019 study](#), recent data shows that the average annual occupancy rate of privately-operated hotels in coastal counties is 70%, and in Southern California, the rate rises to 80% or higher. Year-round occupancy rates at State Parks campgrounds on or near the coast have averaged 65% to 70% in recent years, and during the summer months have typically exceeded 90%. At coastal hostels, occupancy rates can reach 97% during the summer season and up to 85% throughout the entire year, indicating a greater demand than current supply can meet.

<sup>11</sup> [Exhibit 6](#) of A-5-DPT-22-0038 (Dana Point Short-Term Rental Program).

<sup>12</sup> Ref. [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza); [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

<sup>13</sup> The Capistrano Seaside Inn was red-tagged by the City, and the property ultimately went to a foreclosure sale. Overnight stays at the rebranded El Caminante Bar and Bungalows are proposed to be priced between \$300 to \$1,500 per night ([Orange County Register](#), February 1, 2024). The City issued local CDP No. 22-0018, which was not appealed and became final on August 10, 2022; however, the CDP did not expressly allow for the conversion of lower-cost overnight accommodations into market rate units, and Commission staff is investigating the proposed overnight rates for the newly rebranded hotel.

Considering the dwindling lodging options available for low-income visitors in coastal Dana Point, the provision of new lower-cost overnight accommodations is especially important. For this reason, the limited supply of affordable overnight accommodations in the coastal zone is an environmental justice issue. Section 30604(h) of the Coastal Act provides that when acting on a coastal development permit, the issuing agency “may consider environmental justice, or the equitable distribution of environmental benefits.” By referring to “the issuing agency,” the Legislature’s intention was that both the Coastal Commission and local governments would use this authority and consider environmental justice. As defined in Section 30107.3 (a) of the Coastal Act, “environmental justice” means “the fair treatment and meaningful involvement of people of all races, cultures, incomes and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies,” and, pursuant to Coastal Act section 30013, the Commission and all public agencies are charged with advancing environmental justice when implementing the Coastal Act. Thus, environmental justice considerations are relevant to the Commission’s review of new high-cost hotel proposals.

The Commission’s Environmental Justice Policy, adopted in March 2019, indicates that the Commission shall “strive for a no-net-loss of lower-cost facilities in the coastal zone, while implementing a longer term strategy to increase the number and variety of new lower-cost opportunities.”<sup>14</sup> In California, equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices, with greater barriers to access experienced by low-income communities, communities of color, and underserved communities.<sup>15</sup> Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.<sup>16</sup>

Additionally, a State Coastal Conservancy-commissioned survey in 2017 identified that “low and middle-income households, people of color, and young people are less likely than higher-income, white, or older Californians to stay overnight at the California coast” and states: “Respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable.”<sup>17</sup>

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<sup>14</sup> [California Coastal Commission Environmental Justice Policy](#), published by Commission staff March 8, 2019.

<sup>15</sup> “[Free the Beach! Public Access, Equal Justice, and the California Coast](#)”, Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005); [Report on Coastal Act Affordable Housing Policies and Implementation](#), published by Commission staff on February 10, 2015; [Report on the Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns](#), published by Commission staff on June 9, 2022.

<sup>16</sup> [Coastal Access Equity and the Implementation of the California Coastal Act](#), Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

<sup>17</sup> [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

The limited supply of lower-cost accommodations in the coastal zone exacerbates access inequities related to socioeconomic status. A lack of affordable lodging in coastal cities disproportionately prevents individuals from low-income communities from staying on the coast overnight. The majority of new hotels developed in the coastal zone constitute high-cost hotels, while the remaining moderate and lower-cost hotels in the coastal zone may constitute older structures that become less economically viable as time passes. It is often more lucrative for developers to replace these older structures with higher-cost accommodations. Such trends have thus made it difficult for visitors with limited means to access the coast; many of these visitors are traveling from inland locations and cannot easily make the trip to the coast and back home again in a single day. Therefore, by protecting and providing lower-cost lodging for the price-sensitive visitor, the Commission can remove barriers and increase access to a segment of the population facing inequities when visiting the coast. This in turn enhances access to coastal recreational facilities, like piers, boardwalks, and harbors.

To facilitate provision or retention of lower-cost accommodations in new development with overnight accommodations for consistency with Coastal Act section 30213, the Commission has taken a variety of approaches in past actions, for example, requiring that applicants: A) ensure a percentage of the proposed onsite overnight accommodations are provided at lower-cost; B) establish an equivalent number of lower-cost accommodations offsite or nearby; and/or C) ensure an adequate in-lieu fee is paid to a fund designated for creation of new lower-cost overnight accommodations.

In evaluating proposed projects, the Commission has defined what constitutes lower-cost overnight accommodations (or “lower-cost units”), how many lower-cost units should be provided for a given development project, and whether provision onsite, or at a nearby offsite location, is feasible. In some past cases, the Commission has gone on to determine whether an in-lieu fee can be found appropriate to facilitate provision of offsite units when the provision of onsite or offsite lower-cost overnight accommodations was determined infeasible. The Commission has used different methods to calculate the adequate amount for an in-lieu fee.

### **Existing LCP Language and the Marina Inn**

As mentioned above, the existing Marina Inn, consisting of 136 rooms, constitutes the vast majority of lower-cost standard hotel rooms in the City of Dana Point’s coastal zone (especially if the Sea Side Inn is not considered for the reasons mentioned above). Given its location on public tidelands near the waterfront in Dana Point Harbor, the Marina Inn, to this day, provides valuable lower-cost and moderate-cost overnight accommodations to visitors and is a key piece in ensuring continued public access and recreation on the coast through the provision of lower-cost visitor-serving uses. Recognizing the importance of this facility, the City and County (landowner of Dana Point Harbor), requested at the time of certification of the LCP that the Commission require the protection of the lower-cost units of the Marina Inn and require its replacement and/or new construction to contain lower-

cost units, instead of utilizing in-lieu fees.<sup>18</sup> For this reason, the certified LCP contains LUP Policy 5.2.1-2, which states:

“If demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with units that are of equal or lower-cost than the existing lower-cost units to be demolished. Conversion of any existing units to high cost, replacement of any existing units with any other than lower cost, and construction of any new/additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals.”

The goal of this policy was to: 1) set priorities for the types of development within lands suitable for visitor-serving uses; 2) protect those visitor-serving recreational and overnight uses that can be considered lower-cost; 3) protect the current stock of lower-cost overnight accommodations by requiring their replacement with any demolition of existing lower-cost overnight accommodations, and; 4) promote the future development of new lower-cost overnight accommodations. Thus, this policy, which was requested by the City and County, and certified by the Commission, prohibited the City from approving anything other than lower-cost facility in place of the Marina Inn, and if the City were to contemplate approving anything other than a lower-cost facility, it would need to pursue an LCPA.

The staff reports for the certification of the LUP and IP contained findings that the overnight room rates of the Marina Inn were “about \$89.00/night” in 2010, and that “low cost was loosely considered to be less than \$100 per night” at the time.<sup>19</sup> Adjusting for inflation using the Consumer Price Index (CPI), the overnight room rates of the Marina Inn, using April 2024 dollars, should equal approximately \$128.03. However, given the information provided by the City and County, the nightly rates of the Marina Inn have far outpaced the rate of inflation since certification of the LCP in 2011. The average daily rate (ADR) data is as follows:

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<sup>18</sup> [DPT-MAJ-1-08](#) (Dana Point Harbor Revitalization Plan & District Regulations, Land Use Plan Amendment), p. 21, 48.

<sup>19</sup> [DPT-MAJ-1-08](#) (Dana Point Harbor Revitalization Plan & District Regulations, Land Use Plan Amendment), p. 47; [DPT-MAJ-1-10](#) (Dana Point Harbor Revitalization Plan & District Regulations, Implementation Plan Amendment), p. 16.



**Table 1. Annualized Average Daily Rates for the Dana Point Harbor Marina Inn (2012-2022)**

<b>Period (Fiscal Year)</b>	<b>Actual Annualized Average Daily Rate (ADR)</b>
2012	\$90.56
2013	\$92.51
2014	\$96.39
2015	\$102.10
2016	\$106.24
2017	\$114.21 (estimate)
2018	\$122.17 (estimate)
2019	\$130.14
2020	\$137.53
2021	\$169.03
2022*	\$183.70

*Source: Actual ADR obtained from the County of Orange, CEO Real Estate.*

*\*Note: The data for 2022 is for the 12-month period ending in August 2022; the City/County/developer estimate that the true 2022 annualized ADR is closer to \$186.*

The City, County, and developer attribute the rapid rise in the Marina Inn ADRs to a number of reasons. For instance, the Orange County Auditor found unauthorized use of an employee discount program at the Marina Inn from 2013 to 2016, which had the effect of artificially depressing ADRs. From October 2018, a new operator, Dana Point Harbor Partners, LLC (represented by the current developer, R.D. Olson Development), took over the Harbor lease with the County, which included the Marina Inn. At that point, ADRs started increasing slightly. In March 2020, the COVID-19 pandemic heavily impacted the travel and tourism sector. By summer of 2021, it is posited that the leisure travel sector rebounded, but that the business travel sector has not recovered to pre-pandemic levels. The largest increases in the Marina Inn ADRs were seen after 2020, likely driven by high leisure travel demand. The City, County, or developer have not provided Commission staff with more recent data, but Commission staff’s understanding is that the average ADRs have not increased significantly since 2022.

**Defining Lower-Cost Accommodations**

In light of the above information, a question is raised as to whether the Marina Inn is currently offering rooms at lower-cost rates, especially since the intent of the LCP is to preserve lower-cost overnight accommodations at the site. Moreover, in a market subject to constant change, it can be difficult to define what price points correspond to lower-, moderate-, and high-cost accommodations for a given area. The Commission has utilized varying approaches to define such terms, including considering the unique circumstances for each project and applying a quantitative methodology for determining what is considered “lower-cost.”

### Statewide Methodology

The quantitative methodology that the Commission has used in some past projects relies on a formula based on California hotel and motel accommodations (from single up to double occupancy) and does not account for hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower-cost and are the type of facilities that might be required as a compensatory measure for the loss of lower-cost overnight accommodations. The formula calculates the ADR of lower-cost hotels and motels—generally during the peak summer months of July and August— based on the ADRs of hotels and motels across the entire State of California. Under this formula, “lower-cost” is defined as overnight accommodation room rates equivalent to 75% or less than the calculated statewide ADR for the given peak period. To obtain data inputs for the formula, statewide ADRs are collected monthly by Smith Travel Research and are available on the “Visit California” webpage.<sup>20</sup> The formula uses peak-season (summer) rates for standard, double occupancy rooms. To ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties scoring a one- or two-diamond rating.<sup>21</sup> This approach has been recently corroborated by the Coastal Conservancy’s 2019 Explore the Coast Overnight Study, in which lower-cost coastal accommodations were defined as those having a daily rate of 75% or less of the statewide ADR.

When using this formula, the Commission has in past cases determined that the high-cost rates are generally priced 125% or higher than the statewide average daily room rate. By definition, the hotel rooms that are more expensive than lower-cost rooms, but less expensive than high-cost rooms, qualify as moderate-cost rooms. For example: if \$100 was the daily statewide average room rate, lower-cost rooms would be \$75 per night (75% of the statewide ADR); high-cost rooms would be \$125 per night (125% of the statewide ADR); and moderate-cost rooms would range between \$75 to \$125 per night (between 75% and 125% of the statewide ADR).

However, the above-described rate distributions do not necessarily account for the fact that the particular design and amenities of the proposed units afford a better value than a standard, double-occupancy hotel room, and thus more accessible to the general public. For example, many of the proposed units could accommodate families or multiple parties (where cost sharing could occur). The lower-cost hotel guestroom mix would include a variety of queen rooms, double queen rooms, and queen bunk rooms, as follows:

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<sup>20</sup> <https://www.visitcalifornia.com>.

<sup>21</sup> <https://www.aaa.com/diamonds/diamond-ratings-definitions.html>



**Table 2. Lower-Cost Guestroom Types, Counts, and Sizes**

Room Type	Room Count	Room Size (sq. ft.)
Queen	66	201 – 304
Double Queen or Queen Bunk	66	261 – 390
2-Bedroom (8 occupants)	4	517 – 577
<i>Total</i>	136	

The Queen rooms would have standard double (two-person) occupancy, the Double Queen and Queen Bunk rooms would have quadruple (four-person) occupancies, and the 2-Bedroom would have octuple (eight-person) occupancy. No additional charges are proposed for the higher occupancy rooms (i.e., the ADRs would be the same across the 136 rooms).

Thus, instead of needing to reserve multiple standard, double occupancy hotel rooms, a family or group of visitors could take advantage of the higher occupancy rooms in the proposed accommodations, requiring fewer units be reserved, reducing the cost per person. For rooms with greater than standard, double occupancy, one method that the Commission has used in the past to account for the additional cost that may be reflected in the ADR was to add 10% cost for every additional person, given that some hotels charge a similar fee for additional persons staying in a standard hotel room without adding rooms.<sup>22</sup> This would result in a cost increase of 20% to the established ADR based on two additional persons (four persons total), and 40% to the established ADR for four additional persons (six persons total).

Using the methodology described above to define the lower-cost room price threshold, Commission staff obtained statewide ADRs for July and August 2023 to reflect the most recent peak vacation season. Statewide ADRs are collected monthly by Smith Travel Research and available on the “Visit California” webpage, which were \$203.66 for July 2023 and \$197.37 for August 2023 for standard, double-occupancy rooms.<sup>23</sup> Averaging these ADRs provides the following estimates: the 2023 peak-season statewide ADR is \$200.52, the lower-cost rate is \$150.39, the high-cost rate is \$250.64, and moderate-cost rates are between \$150.39 and \$250.64.

However, the subject LCPA request was received in November 2021, and information regarding the existing hotel has been provided through August 2022. As such, the City’s submitted data and feasibility analyses consider ADRs averaged from July and August 2022. Averaging these ADRs provides the following estimates: the 2022 peak-season statewide ADR would be \$204.16 for standard, double-occupancy rooms; the lower-cost rate would be \$153.12; the high-cost rate would be \$255.20; and moderate-cost rates

<sup>22</sup> Ref. [2-20-0018](#) (Dillon Beach Resort).

<sup>23</sup> Ref. <https://industry.visitcalifornia.com/research/researchdashboard>

would be between \$153.12 and \$255.20. This amounts to a difference of \$2.73 between the lower-cost rates in 2022 and 2023 for standard, double-occupancy rooms. To facilitate consistency with the City’s submitted analyses, the Commission considers the 2022 rates in its analysis.

Also, it is important to note that only 66 of the 136 rooms proposed would have standard, double occupancy. As shown in Table 2 above, 66 rooms would be quadruple occupancy and four rooms would be octuple occupancy. Using the approach set above to account for additional occupants, the quadruple occupancy rooms would result in an ADR of \$183.74 (20% above the 2022 lower-cost peak-season statewide ADR), and the sextuple occupancy rooms would result in an ADR of \$244.99 (60% above the 2022 lower-cost peak-season statewide ADR). When taking the weighted average of the proposed double-occupancy, four-person-occupancy, and eight-person-occupancy rooms and their lower-cost price points, the statewide methodology yields a lower-cost ADR threshold of \$170.68 across the 136 rooms.<sup>24</sup> Thus, for this particular hotel and hotel configuration, given the large number of rooms that accommodate more than double occupancy, \$170.68 is an appropriate estimate of the high end of the range of what could be considered “lower-cost.”

### Regional Methodology

The Commission has also sporadically employed another quantitative methodology that relies on a survey of ADRs of “economy-type” hotels in a given region or area.<sup>25</sup> Following the Coastal Commission’s 2016 Lower Cost Workshop,<sup>26</sup> the Resources Legacy Fund engaged Maurice Robinson & Associates, LLC (Robinson) to develop a methodology that offers an alternative to the Commission’s methodology relying on statewide metrics, and which, instead, surveys rates charged for economy motels as defined by Smith Travel Research within a specific geographical area (typically on a city/county scale). The method developed by Robinson outlines ten steps to determine the lower-cost hotel rate in a given area and can be performed by a consultant with expertise in hotel markets and feasibility analyses.

In this case, the City and developer retained the services of Robinson, PlaceWorks, and Gaines & Stacey, LLP to develop a regional economy-rate study for “Coastal Orange County,” which is defined as the County’s coastal zone “and the area within one mile of the coastal zone” ([Exhibit 6](#)). In the “Lower-Cost Visitor-Serving Accommodations Technical Memorandum” prepared by PlaceWorks dated November 3, 2022, the consultant surveyed 74 hotels within this geographical area and employed a simplification of the Robinson method which consists of: 1) obtaining room rate data (from Smith Travel Research or

<sup>24</sup> The formula can be restated mathematically as such:

$$\frac{([\text{Number of occupants in room}] - 2) * 0.1 = \text{“occupancy allotment”}; \text{ therefore, } (\sum([\text{75\% of peak-season statewide ADR}] * (1 + [\text{occupancy allotment}]) * [\text{number of rooms}]) / [\text{total number of lower-cost rooms}] = \text{“maximum rate.” In this example, } ([\$153.12 * (1 + (2 - 2) * 0.1) * 66] + [\$153.12 * (1 + (4 - 2) * 0.1) * 66] + [\$153.12 * (1 + (8 - 2) * 0.1) * 4]) / 136 = \$170.68.$$

<sup>25</sup> Ref. [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [2-20-0018](#) (Dillon Beach Resort).

<sup>26</sup> [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016

similar database); 2) ranking the hotels from lowest ADR to highest ADR, using conventional industry thresholds of

“budget” (lowest 20% of ADRs),  
“economy” (next 20% of ADRs),  
“mid-price” (next 30% of ADRs), and  
“upscale” (top 30% of ADRs);

3) identifying which hotels and motels should be included in the economy segment (i.e., those with ADRs equal to or below the 40<sup>th</sup> percentile); 4) determining the average ADR for economy segment hotels and motels, and; 5) using the average ADR determined in (4) as the threshold cutoff between lower-cost and mid-cost hotels and motels in the specified geographic area.

In a follow-up memorandum dated March 1, 2023, PlaceWorks justified the geographical area surveyed (coastal zone plus one-mile radius) because “there are quite a few lower- and moderately-priced hotels just outside of the Coastal Zone boundary (within one mile of the coastal zone boundary,” and “they are close enough to the beaches and other coastal resources that they are part of the market area for coastal visitors,” but “[g]oing farther away from the Coastal Zone, hotels transition from primarily serving the coastal-visitor leisure-travel market to primarily serving the business travel market[....] Based on PlaceWorks’ expertise with development and economic patterns in Orange County, a one-mile boundary most effectively splits the two travel markets.”

The consultant found that, when using the above outlined regional economy-rate methodology, the 20<sup>th</sup> percentile ADR is \$204 and 40<sup>th</sup> percentile ADR is \$256 for Coastal Orange County (as heretofore defined). Therefore, when averaged across both “budget” and “economy” classes, the analysis finds that lower-cost overnight accommodations in this region would have 2022 peak-season ADRs that are equal to or less than \$230 per night.

However, when viewed within the statewide context, the \$230 ADR figure calculated by the consultant is squarely within what the Commission typically considers to be on the higher end of “moderate-cost,” and in certain areas of the California coastal zone, would be considered “high-cost” or market rate. The consultant has argued that this ADR may be viewed as lower-cost within the hyperlocal context of Coastal South Orange County (limited to the coastal zone of Laguna Beach, Dana Point, and San Clemente plus a one-mile radius), where the average 2022 peak season ADR of budget and economy hotels is \$272, or within the City of Dana Point, where it is \$280. Nonetheless, the City, County, and developer agree that an ADR on the order of \$230 would be excessive and would not be typically understood to be “lower-cost.”

### Proposed Project

The current LCPA, as submitted, retains the existing requirements in LUP Policy 5.2.1-2 that “all 136 demolished units shall be replaced [...] with units that are of equal or lower cost than the existing lower cost units to be demolished.” In other words, the City is proposing that the new replacement units at the Surf Lodge be priced equal to or lower

than the existing ADR at the Marina Inn, which the City and developer have estimated as approximately \$186 for the 2022 fiscal year. The City and developer have explained that this ADR, while likely to increase before the Marina Inn is slated for demolition, would still be below their consultant's regionally assessed economy rate of \$230. The City's proposed amendment also includes new language stating that "[t]o mitigate any absence of lower cost overnight accommodations at the new and separate market rate hotel, additional lower cost overnight accommodations or amenities above the 136 rooms may be required." These would be in addition to the 136 replacement lower-cost hotel rooms. However, it is not clear in this language whether the existing Marina Inn ADR would apply to these additional new lower-cost overnight accommodations, or if any such rooms would actually be required to offset the construction of market rate rooms at the Dana House Hotel. Potentially, this contingent of lower-cost rooms could be priced even higher since the City's proposed language does not have explicit requirements. It is also unclear how many such units would be required in the first place.

The Commission finds that the City and developer's proposed language, which allows for the lower-cost replacement units at the Surf Lodge to be priced at approximately \$186/night (and potentially subject to price increases), and which may also apply to new lower-cost rooms at the Dana House Hotel, still presents a price point higher than the 2022 peak-season statewide average for lower-cost rooms (which, if adjusted for occupancy, was \$170.68), and thus could create barriers for visitors with limited means to access the coast, especially visitors traveling from inland locations and those from low-income communities that face inequities when visiting the coast. Coastal Act Sections 30210 and 30213 require that lower-cost lodging be protected, and provided where feasible, and the Commission has repeatedly made findings in previous actions that increasing access to the coast for the price-sensitive visitor is crucial in resolving long-standing socioeconomic inequities and in enhancing access of all people to coastal recreational facilities like the Dana Point Harbor. While the Commission recognizes that the existing certified language in LUP Policy 5.2.1-2 allows future replacement hotel units to be offered at the existing Marina Inn rates, this policy language was written under the assumption that the Marina Inn would be lower-cost in-and-of-itself, and that assumption has recently come into question. Moreover, the standard of review for this LCPA is the Chapter 3 policies of the Coastal Act. In the current statewide context, the existing ADRs at the Marina Inn would qualify as moderate-cost.

Given the Coastal Act's policies emphasizing maximum public access, and the need to address inequitable coastal access, particularly on publicly owned state tidelands, the Commission finds that the statewide approach to assessing what constitutes a "lower-cost" room is appropriate in this case to maximize public access and recreation opportunities for all people. This approach also aligns with the definitions and findings laid out in the Coastal Conservancy's 2019 Explore the Coast study.<sup>27</sup> Oftentimes it can be difficult for local governments and project proponents to obtain published regional rates, and the ten-step methodology proposed by Robinson to develop a lower-cost threshold based on

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<sup>27</sup> [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

regional economy-rate data is usually simplified in financial feasibility analyses (as the consultant has done in this case), and, in this case, the developer, City, and County agree that the lower-cost rate identified in the PlaceWorks analysis does not actually reflect a lower-cost room rate. Thus, the City's proposed LCPA language that would use the existing Marina Inn ADRs does not adequately protect lower-cost overnight accommodations, as required by Coastal Act section 30213, and the Commission finds that the LCPA must be rejected, as submitted.

Moreover, the Commission finds that lower-cost rate thresholds consistent with the statewide approach are more appropriate in this case because the area subject to this LCPA constitutes public trust tidelands that the State of California has granted to the County to manage for the benefit and use of the public. Unlike much upland private coastal property, tidelands are generally open to all visitors at no or low cost and are thus critical from public access and environmental justice standpoints as an important resource providing equitable access to coastal and marine resources and recreation. As such, the City in coordination with the County, the manager of these trust lands, are both responsible for ensuring maximum public access to these lands, in this case through the provision of lower-cost overnight accommodations.

In a similar past case concerning the Sunroad Hotel project proposal at the Port of San Diego, where the Port was proposing a Port Master Plan Amendment to allow for hotel development on public tidelands, the Commission found that requiring lower-cost overnight accommodations onsite "assures that visitor-serving facilities are provided for all of the people of the State, consistent the [P]ublic [T]rust [D]octrine and the public access and recreation policies of the Coastal Act."<sup>28</sup> Likewise, in the case of the Dana Point Harbor, the City of Dana Point is in a unique position to manage development within the Harbor in a manner that maximizes the public benefit consistent with the public access and recreation policies of the Coastal Act, the certified LCP, and the Public Trust Doctrine. The City has the ability to facilitate the development of truly lower-cost overnight accommodations on public tidelands at the Harbor because it can coordinate with the County, which is the landowner and manager of the Harbor and which can make land available or reserved for such development at a subsidized cost, and the City can also work cooperatively with a prospective private sector/developer through the coastal development permit process. The City may additionally choose to coordinate with third-party entities such as the Ocean Institute, the OC Sailing and Events Center, and Dana Point Harbor Partners, LLC (DPHP) to direct community benefits and programming associated with the hotel development to further maximize lower-cost overnight access and recreational opportunities on public trust lands.

Considering the above factors, the Commission finds that in this case, the definition of lower-cost ADRs is best derived using a percentage of the statewide average room rates. City staff, County staff, and the developer have indicated that if the developer were to provide rooms within the statewide average for lower-cost rooms (which, using 2022

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<sup>28</sup> Ref. [PMP-6-PSD-14-0003-2](#) (East Harbor Island Subarea).

figures and adjusted for occupancy, was \$170.68 per night), this would render the entire hotel development infeasible. The City, County, and developer maintain that the more appropriate threshold for determining a lower-cost ADR is the regional economy-rate approach prepared by PlaceWorks. Under the PlaceWorks analysis, the 2022 annualized rate of the existing Marina Inn of approximately \$186 constitutes a lower-cost rate.

In a memorandum dated June 2, 2022, Gaines & Stacey, LLP, representing the developer, further claimed that the regional economy-rate approach is appropriate because the Commission has previously approved higher ADRs in projects such as the Shore Hotel in Santa Monica (Ref. CDP 5-18-0972), which resulted in a rate of \$188 per night, and the Dillon Beach Resort in Dillon Beach (Ref. CDP 2-20-0018), which resulted in peak-season rates of \$199 to \$249 per night. The developer is also pointing to the Commission's recent approval of the American Tin Cannery Hotel Resort in Pacific Grove (Ref. CDP A-3-PGR-22-0004), where the Commission approved an ADR of \$184 per night and found that it is lower-cost within a regional context. The Commission appropriately considers the facts of each proposed LCP(A) and CDP on a case by case basis, and in these examples provided by the developer's attorney, the Commission defined lower-cost ADRs at rates that are higher than those that it finds appropriate in this case, based on all of the factors analyzed above, including the location of these proposed hotels on public tidelands. In this particular case, the Commission finds that in order to maximize public access and protect lower-cost accommodations, the threshold for what is considered a lower-cost ADR should be established based on a percentage of the statewide average of peak-season ADRs.

**Suggested Modification 3** would modify the LCPA such that, instead of the City's proposed language, lower-cost rate thresholds would be calculated using a statewide approach. The suggested modification requires the definition of a lower-cost ADR to be based on 75% of the peak-season statewide ADR, but allows this ADR to be adjusted for occupancy and inflation. In 2022, this ADR was equal to \$170.68. However, the Commission also finds that the City/County/developer have demonstrated that requiring all of the replacement rooms in the Surf Lodge to be offered at the aforementioned lower-cost ADRs would render the project infeasible, which would not further the Coastal Act policy to protect, encourage, and **where feasible**, provide lower-cost visitor facilities. Existing LUP Policy 5.2.1-2 also allows for the replacement hotel units to be priced at the existing Marina Inn rates at the time of its demolition. The suggested modification therefore allows for a carveout whereby the replacement lower-cost units at the Surf Lodge could still be offered at rates up to the Marina Inn's 2022 annualized ADR (equating to approximately \$186), subject to once-annual increases in CPI to account for inflation.

Still, given that the LCPA would allow development of a new moderate-cost hotel on public tidelands, in order to find that the LCPA and proposed hotel development would be fully consistent with Coastal Act Sections 30210 and 30213, as informed by the Commission's Environmental Justice Policy, the hotel developer must account for the loss of the opportunity for truly lower-cost visitor accommodations through the provision of opportunities for lower-cost recreation which offset the rate differential between the lower-cost ADRs based on the statewide average and the developer's proposed ADRs (which are based on the Marina Inn room rates). Using 2022 rates, the rate differential would be a maximum of approximately \$15.32. The developer would need to directly provide or contribute to lower-cost overnight accommodations or lower-cost overnight programming



on the coast, preferably at Dana Point Harbor. As part of earlier discussions, the City, County, and developer worked together on developing a lower-cost overnight access program that would allow for the provision of lower-cost overnight accommodations offsite and within the Harbor, in coordination with the Ocean Institute and the OC Sailing and Events Center ([Exhibit 7](#)). The parties' initial proposal was to require the developer or operator of the proposed hotels to pay a fee in lieu of providing lower-cost overnight accommodations associated with the development of the market rate Dana House Hotel. The in-lieu fee would have been directed to a third party that would develop direct programming that has a lower-cost overnight access component, whether it be offsite camping, new hostel facilities, or overnight excursions. Additional details of this previously proposed program and its scope are discussed in the later section of this staff report concerning in-lieu fees.

Although the City, County, and developer are no longer proposing this program, as they are providing all hotel rooms onsite, it provides an opportunity to fund a program that would facilitate lower-cost visitor and recreational programs at the Harbor. A contribution towards this program could therefore be considered appropriate in offsetting the provision of moderate-cost rooms in the proposed Surf Lodge instead of truly lower-cost rooms. **Suggested Modification 3** therefore allows the rate differential to be offset through lower-cost overnight access programming (such as included in [Exhibit 7](#)), as part of an overall community benefits package, which would be funded (or directly provided) by the developer as memorialized in new LUP Policy 5.2.1-23.

### **Required Number of Lower-Cost Rooms**

After defining the project as low-, moderate-, or high-cost, the Commission must next determine how many, if any, lower-cost rooms/units should be provided for a given project to be consistent with Coastal Act Section 30213 requirements. Section 30213 of the Coastal Act requires that **existing** lower-cost overnight accommodations be protected, and existing certified LUP Policy 5.2.1-2 states that if the Marina Inn is demolished, then all the demolished units (136 rooms) must be replaced with lower-cost facilities within the same location. The City's submitted LCPA does not make substantial changes to the overall requirement that the existing lower-cost hotel must be replaced in-kind in terms of number of rooms and rates. If the replacement hotel rooms are offered at lower-cost rates as modified by **Suggested Modification 3**, then this portion of the LCPA is consistent with the Coastal Act. To ensure compliance with the lower-cost rates thresholds defined above, this suggested modification recommends requiring that such lower-cost units be subject to annual Commission reporting and auditing requirements, as would be conditioned in a future CDP.

Section 30213 also encourages **new** lower-cost overnight accommodations, and where feasible, requires them. In past projects, the Commission has found that one method of encouraging and providing new lower-cost accommodations is to ensure at least 25% of

the total proposed new market rate hotel rooms are provided at lower-cost rates.<sup>29</sup> Since the planned hotel project would construct 130 new high-cost hotel rooms, then, based upon past Commission actions and the Commission's consideration of environmental justice, at least 33 lower-cost rooms should be provided (i.e., 25% of 130 rooms), onsite if feasible, for consistency with Sections 30210 and 30213. In this case, the 33 lower-cost rooms may be additive (resulting in 163 total rooms at the Dana House Hotel), replace (resulting in 130 total rooms at the Dana House Hotel), or adjoined to the lower-cost replacement hotel (resulting in 169 total lower-cost rooms at the Surf Lodge).

As explained in the sections above, the City's submitted LCPA is vague with regard to the requirement of additional new lower-cost rooms. For instance, LUP Policy 5.2.1-2 is proposed to be amended to read that "additional lower cost overnight accommodations or amenities above the 136 rooms **may** be required" [emphasis added] in order "[t]o mitigate any absence of lower cost overnight accommodations at the new and separate market rate hotel." In addition to the fact that it is not clear as to the quantity or scope of this requirement (i.e., how many rooms), it is also unclear whether the City is requiring lower-cost overnight accommodations or lower-cost visitor-serving amenities, or a mixture of both, and what that may actually look like. Moreover, this language characterizes the need to "mitigate" the absence of lower-cost overnight accommodations at the Dana House Hotel, but the Commission finds the 25% contingent of lower-cost rooms to be a direct requirement of the Coastal Act, if and wherever feasible, as compared to "mitigation."<sup>30</sup> Therefore, the Commission denies the LCPA as submitted.

### **Feasibility of New Onsite Lower-Cost Rooms**

Sections 30210 and 30213 of the Coastal Act support the Commission's approach that development providing new lower-cost accommodations onsite is the preferred method of protecting and maximizing public coastal access and recreation, especially in public tideland areas. Where onsite provision is infeasible, the Coastal Act still requires protection and encouragement of lower-cost visitor serving facilities. In past cases, the Commission has alternatively required offsite provision of lower-cost overnight accommodations or fee payments in lieu of the construction of an equivalent number of lower-cost rooms/units (such as hostel beds) offsite.<sup>31</sup> As explained further below, if the Commission determines that an in-lieu fee option is indeed appropriate, then the collected funds can be disbursed to an acceptable third party entity to be spent on the future construction of offsite lower-cost units.

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<sup>29</sup> Ref. [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza); [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [A-6-ENC-22-0049](#) (Encinitas Beach Land Venture I, LLC); [A-5-LGB-21-0060](#) (Highgate Hotels); [5-20-0597](#) (Franco); [5-20-0181](#) (B&J Capital Group Investments); [5-18-0872](#) (Sunshine Enterprises, LP); [A-5-DPT-18-0046](#) (Lancor); [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

<sup>30</sup> Ref. [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza); [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [A-6-ENC-22-0049](#) (Encinitas Beach Land Venture I, LLC).

<sup>31</sup> Ref. [5-20-0181](#) (B&J Capital Group Investments); [5-20-0597](#) (Franco); [5-21-0139](#) (Ocean Avenue, LLC).



The developer’s economic consultant, Robinson, published four reports dated September 21, 2021 through February 15, 2023, analyzing the financial feasibility of providing lower-cost rooms onsite ([Exhibit 6](#)). The consultant assumed that the Surf Lodge would be complete by mid-2025, and that the Dana House Hotel would be open by mid-2026. Thus, the projected future lower-cost rates in 2025 are calculated by adding a positive 3% average annual rate of inflation to the 2022 annualized Marina Inn rate (of approximately \$186), resulting in a \$206.53 room rate by 2025. Likewise, the market rate is anticipated to be \$478.34 in mid-2026 using the same assumptions.

The consultant considered the feasibility of eight various “scenarios” of differing room counts, compositions, locations, and costs among the two planned hotels. The consultant initially only considered seven scenarios, but upon Commission staff’s request to analyze a project alternative where 33 lower-cost rooms are appended to the 136-room lower-cost Surf Lodge, Scenario 8 was included in the most recent feasibility reports. The consultant produced projections for the development costs and internal rate of return on investment (IRR) for each scenario. The eight scenarios are summarized in the following table:

**Table 3. Consultant’s Projected IRR for Eight Considered Scenarios**

Scenario	Number of Lower-Cost Rooms	Number of Market-Rate Rooms	Development Costs	Projected IRR	In-Lieu Fees
1	139	130	\$160,151,822	+5.8%	-
2	169	97	\$159,242,651	-0.6%	-
3	220	0	\$75,645,409	-0.9%	-
4	147	130	\$163,311,680	+5.4%	\$2,794,000
5	161	100	\$153,306,374	+2.7%	-
6	145	130	\$161,200,317	+5.7%	-
7	136	130	\$163,285,031	+5.1%	\$4,191,000 <sup>32</sup>
8	169	130	\$165,957,048	+5.5%	-

Originally, the developer’s preferred alternative (Scenario 1) was for a 139-room Surf Lodge (lower-cost) and 130-room Dana House Hotel (market rate). Three of the lower-cost Surf Lodge rooms would contain sixteen (16) beds each in dormitory style, for a total of 48 beds. The City and developer believed that this scenario would fulfill the requirement to provide 33 new lower-cost rooms. However, the Commission has typically assumed that one hotel room has a two-person occupancy, and therefore the 33 required lower-cost

<sup>32</sup> The City, County, and developer’s in-lieu fee proposal has since increased to \$4,704,401. There is no indication that the in-lieu fee would be proposed to adjust even further to account for future inflation.

rooms should be thought of in terms of at least 66 occupants or beds.<sup>33</sup> Furthermore, Commission staff indicated to the City and project proponent that the dormitory or hostel-style accommodations in Scenario 1 are less preferable than conventional double-occupancy rooms in meeting the requirements of Coastal Act Sections 30210 and 30213, while noting that the Commission has also made findings that a mix of accommodation types at various price points can be used to provide a range of affordability.<sup>34</sup>

As such, the consultant developed Scenarios 4, 6, and 8, which are iterations of the first scenario but with different room counts and configurations to allow for the provision of 33 new lower-cost rooms (note: in the case of Scenario 4, an in-lieu fee is proposed to offset 22 lower-cost rooms that would not be provided onsite). Scenario 7 also considered a hotel project in line with the City's originally submitted LCPA (allowing a 136-room lower-cost hotel and a 130-room market rate hotel), except that the developer would pay a fee of \$4,704,401 in lieu of providing additional lower-cost overnight accommodations directly onsite. The consultant also considered converting 33 market rate rooms at the Dana House Hotel to 33 lower-cost rooms (Scenario 2), as well as a 220-room Surf Lodge as currently described in the certified LCP (Scenario 3), but these scenarios are projected to produce negative IRRs and are thus infeasible. Another alternative would replace a 30-room portion of the Dana House Hotel with 25 lower-cost rooms at the Surf Lodge (Scenario 5), and it is projected to be slightly more feasible (IRR of +2.7%). Finally, the developer's consultant had previously indicated a preference for Scenario 7, but the developer is now most interested in Scenario 8, which was Commission staff's recommended project alternative.

As shown in Table 3 above, Scenarios 1, 4, and 6-8 are expected to have IRRs above +5.0%. The consultant describes these IRRs as "only marginally profitable" and states that "[m]ost real estate developers target 12% to 15% IRR for a new hotel project." However, the consultant also mentions that the developer "is willing to accept this below-market return to complete the redevelopment of the Harbor." The Commission also notes that the investment in the planned hotel project will be on the order of hundreds of millions of dollars, and fluctuations of a couple percentage points in the projected IRR may not be crucial because the inflows and outflows of cash would be large, and the economy of scale of the hotel is likely to render conventionally low IRR values still financially profitable. Finally, unlike typical hotel development on private upland properties, where land must be purchased in order to be developed, the hotel developer in this case will not incur land acquisition costs as the land is under the public trust that is owned and managed by the County. Exhibit F of the Master Ground Lease Agreement between the County of Orange

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<sup>33</sup> This assumption is consistent with the Commission's approach with using statewide ADRs to determine lower cost rate thresholds, as the data collected by Smith Travel Research to inform statewide ADRs is based on rates for standard double-occupancy (two-person) rooms at the equivalents of AAA one- and two-diamond rated hotels. This assumption is also consistent with the Commission's approach for calculating in-lieu fees, which is based on the Commission's consultant's methodology in 2015 that the hostel bed construction cost estimate provided by Hostelling International in 2014 should be roughly doubled to estimate the construction cost of a hotel/motel room based on size and occupancy differences. See [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza), including [Exhibit 5](#).

<sup>34</sup> Ref. [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort); [A-5-VEN-21-0011](#) (Wynkoop Properties, LLC).

and DPHP dated October 29, 2018 has a rent schedule that requires the hotel operator to pay an annual minimum rent of \$75,000 in the first year that will go up to \$250,000 by the fifth year, which is then subject to increases thereafter. Based on the stipulations of the lease, the hotel operator is thus expected to pay approximately \$26.5 million to \$36 million in rent to the County over the 60-year lease term for the two planned hotels, in addition to the approximately \$996,000 that has already been paid as rent to lease the existing Marina Inn. These figures are much lower than what it would have likely cost the developer to purchase the 9.5-acre site outright if it were private property. Additional discussion of land valuation methodologies and estimates are included in Section IV.C (Public Access and Recreation) of this staff report. Together, these factors are taken to mean that the typical industry profit margins of +12% to +15% that are cited in the consultants' reports may not directly apply in this case.

Still, the Commission understands that finances are a key component in establishing feasibility for the direct provision of new lower-cost rooms under Section 30213 of the Coastal Act. Looking at all eight scenarios that the consultant analyzed, the developer's preferred Scenario 8, which was suggested by Commission staff, would best align with the Commission's typical requirements for new lower-cost overnight accommodations in the coastal zone, and it would also have a relatively higher projected IRR of +5.5%.

In the February 15, 2023 memorandum, the developer's consultant posits that, beyond profit margins, there are other factors that constitute financial feasibility; likewise, the City, County, and developer argue that there are other aspects to feasibility that are entirely non-financial.

In terms of the various factors that influence financial feasibility, Robinson cites: 1) obtaining financing and loans, 2) day-to-day hotel operations, 3) branding, affiliations, and marketability, and 4) exit strategy. More specifically, for the first factor, the consultant contends that a lender could not support underwriting a construction loan for a hotel with additional rate-restricted rooms, especially since the project is on a County leasehold and there would be little collateral value in the event of a default or foreclosure. For the second factor, the consultant contends that additional rate-restricted rooms, especially under the less profitable scenarios, would make finding an operator difficult, as the lower-cost rates would result in lower revenues and command lower management fees for the operator. For the third factor, the consultant similarly contends that lower revenues generated by new lower-cost rooms would hinder securing an affiliated brand in the first place, would negatively impact the management and franchise fees of the selected brand, and could result in the hotel defaulting under the franchise or brand agreement. For the final factor, the consultant contends that additional lower-cost rooms may affect the salability of the hotel in the future should the hotel developer decide to walk away from the project and transfer the assets to another owner/operator. While the Commission agrees that these factors and challenges play a role in establishing the financial feasibility of directly providing new lower-cost overnight accommodations onsite, they are not unique to this particular case or site, and the Commission has previously approved numerous projects directly providing new lower-cost overnight accommodations in the California coastal zone. Moreover, the consultant remarks that none of these factors present an issue with regard

to some of the more feasible project alternatives, including Scenario 8 suggested by Commission staff.

In terms of the non-financial aspects of analyzing feasibility for directly providing 33 new lower-cost rooms onsite, the City, County, and developer claim that there are considerations such as physical constraints of the site (e.g., height limits, parking requirements, boater service facilities), visual resource impacts, negative public opinions of lower-cost and lower quality overnight accommodations, and CEQA consistency issues. Again, the Commission understands that these factors present challenges to feasibly providing new lower-cost overnight accommodations in general, but Commission staff has painstakingly reviewed these aspects of the planned project, and they have not raised significant issues that would prevent the City from requiring new lower-cost overnight accommodations in this case in conformance with Coastal Act Section 30213. These aspects are covered in greater detail in Sections IV.C (Public Access and Recreation), IV.D (Visual Resources), and IV.E (Development) of this staff report.

In summary, the City, County, and developer agree with Commission staff's suggested Scenario 8 (providing 33 new lower-cost rooms adjoined to a 169-room lower-cost hotel and 130 market-rate rooms) and the assessment that it would be both economically and practically feasible. Scenario 8 would also be consistent with the Commission's intent of ensuring a range of affordability in new overnight accommodation projects and would enhance public access to the Dana Point coastal zone, consistent with Coastal Act Sections 30210 and 30213 and the LCP.

The Commission finds Scenario 8 to remain feasible even when:

- 1) The new 33 lower-cost rooms would be truly lower-cost, with rates at or below the index of 75% of peak-season statewide ADR (plus CPI and accounting for occupancy) instead of the existing Marina Inn rates plus CPI (per **Suggested Modification 3**), and;
- 2) The developer would be responsible for directly providing or financially supporting additional community benefits package that includes programming as recommended in **Suggested Modification 3** (for additional lower-cost overnight opportunities in the Harbor) and **Suggested Modification 5** (for additional public access and recreation benefits).

The City, County, and the developer strongly contest this conclusion. They posit that Scenario 8 could be feasible, but only when operating under the assumption that the rates of the new 33 lower-cost rooms would be consistent with the rates of the 136 replacement lower-cost hotel rooms (i.e., the Marina Inn's 2022 annualized plus CPI). They maintain that if the 33 lower-cost rooms must be consistent with the statewide lower-cost threshold, in conjunction with fees needed to address both the rate differential of the replacement hotel rooms and adverse impacts to public access, these modifications would render the entire hotel development infeasible. Likewise, the City, County, and developer state that they would not be amenable to an in-lieu fee option for the rate differential of the new 33 lower-cost rooms, as it would still present the same issues of feasibility as pegging the

ADR of those rooms to the statewide lower-cost threshold. As such, this remains a major area of controversy. Additional discussion follows in the next section.

### **Offsite Lower-Cost Accommodations and In-Lieu Fees**

During the LCPA review process, the City, County, and developer had proposed an offsite lower-cost accommodations program in order to demonstrate that such an option would be just as viable in terms of consistency with Coastal Act and existing LCP policies. The previously proposed program would have directly partnered with an existing lease-holding third party entity in the Harbor (e.g., Ocean Institute, OC Sailing and Events Center) to provide or fund programming with a lower-cost overnight component ([Exhibit 7](#)). The County and developer initially proposed the concept of the Ocean Institute's Sea Coastal Access & Marine Program ("Sea CAMP"), which would offer two- to three-day overnight camp and field trip experiences to disadvantaged school-aged youth, with a particular target of Title 1 and inland students and at-risk youth. Under this proposal, funding would comprehensively cover expenses for accommodations, meals, transportation, and program administration for at least ten (10) years, with approximately 500 trips a year. The Ocean Institute already has similar overnight programs that are up-and-running, and the County provided information showing that they have consistently served approximately 10,000 students every year since 2020. In response to Commission staff feedback that additional affordable lodging components are desired, the submitted program was revised to also include a proposal to upgrade and enhance existing facilities at the OC Sailing and Events Center to create new lower-cost dormitory-style rooms, private cabins, or camping areas for public rental, as well as new overnight educational programs for youth. To fund these lower-cost overnight opportunities near the project site, the developer had proposed contributing in-lieu fees, which the developer's consultant originally estimated at \$4,191,000 in total (based on the Turner Building Cost Index (TBCI)<sup>35</sup> in Q4 2022). The proposal then increased to \$4,704,401 to account for increases in the TBCI. At the time, the developer had not expressed interest in directly undertaking the operations of such a program.

Commission staff reiterated to the City, County, and developer the importance of providing all lower-cost rooms required onsite and with adequate lower-cost facilities and amenities. Commission staff explained that due to the finding that direct provision of the lower-cost rooms onsite is feasible, an in-lieu fee would not be appropriate in this case. When presented with these facts, the developer contemplated whether to directly provide additional lower-cost overnight accommodations onsite or offsite. Ultimately, the developer is choosing to proceed with Scenario 8 providing all the new lower-cost rooms that are required onsite. As already discussed above, the City, County, and developer find the lower-cost overnight programming or directed in-lieu fees such as in [Exhibit 7](#) to no longer be necessary because the developer is now amenable to providing all lower-cost rooms necessary.

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<sup>35</sup> The Turner Building Cost Index is used widely by federal and state governments to measure costs in the nonresidential building construction market in the United States. (Ref. <https://www.turnerconstruction.com/cost-index>).

Nonetheless, there is the issue that the replacement hotel rooms at the Surf Lodge are proposed to be offered at the existing Marina Inn rates per the certified language in LUP Policy 5.2.1-2, which are higher than the Commission's statewide lower-cost thresholds and may present some inconsistencies with Coastal Act Section 30213 if not adjusted in some manner. Similarly, if the new 33 lower-cost rooms, which are also proposed to be located at the Surf Lodge, would be offered at these higher rates, then additional offsets for this contingent of rooms would also be needed to find the development consistent with Coastal Act Section 30213 requirements to protect lower-cost overnight accommodations, particularly for accommodations located on public tidelands. Thus, an approach should be taken which still offsets these aforementioned rate differentials for the lower-cost rooms, but which also still allows the overall hotel development to remain financially and practically feasible.

First, **Suggested Modification 3**, as formulated, would only allow the 136 replacement hotel units to be offered at the City/County/developer's higher proposed rates, whereas the new 33 lower-cost hotel rooms would need to be offered at the statewide lower-cost threshold. This would mean that only the 136 replacement hotel units would have a rate differential between what is proposed and the lower-cost threshold that the Commission understands to be most consistent with Section 30213 requirements. This is mainly done as a way to ensure that the overall hotel development is still feasible, as Commission staff's analysis found that the anticipated IRR would be higher if the new 33 lower-cost units would be provided at the statewide lower-cost threshold, rather than at the 2022 annualized Marina Inn rates (plus CPI) which then necessitates an offset that is ultimately more costly. It is also important for the Commission to consider that it is ensuring public access for all people, not just those living in higher-cost areas, such as coastal Orange County. Given this context, the Commission finds that, lower-cost hotel rooms in this case should be lower-cost from a statewide perspective, even while there may be circumstances in other cases whereby existing lower-cost rooms that are replaced may be analyzed differently. The suggested modification then allows for the offset required for the replacement hotel units to be provided through the lower-cost overnight access programming included in [Exhibit 7](#), which would be either funded or directly provided by the developer as memorialized in new LUP Policy 5.2.1-23. The Commission finds that this is the best strategy to ensure that remaining issues of consistency with Section 30213 are resolved while still ensuring that the overall project would be feasible.

A question is then raised as to the amount of the offset for the rate differential of the replacement hotel units.

The Commission notes that in certain cases in the past, and **only** if it was found infeasible to provide lower-cost overnight accommodations directly onsite or in the nearby vicinity of the site (i.e., offsite), the Commission has determined that an in-lieu fee option may be appropriate to facilitate the future construction of offsite lower-cost units by an acceptable third-party entity. In these past cases where the Commission entertained an in-lieu fee option, the funds were paid into an account managed by an entity acceptable to the Commission, which can include the local government, State Coastal Conservancy, California State Parks, Hostelling International, or a similar agency familiar with lower-cost accommodations management, to ensure that such funds are spent on new lower-cost units, including new lower-cost hotel or motel, campground, or hostel facilities.



In this case the City, County, and developer assert, and the Commission agrees, that the provision of the 136 replacement hotel rooms at the Commission's typical statewide lower-cost threshold of 75% of the statewide (peak-season) ADR, even when adjusted for occupancy and inflation, would not be feasible. As such, it would be sensible to base the offset for the rate differential as some percentage of what the in-lieu would be if the 136 replacement hotel rooms were provided at market rate.

The developer most recently calculated an in-lieu fee of \$4,704,401 for a previous offsite lower-cost overnight proposal. The Commission finds issue with this calculation, as it does not account for all of the costs inherent in providing overnight accommodations. In 2014, Hostelling International published a report estimating an average construction cost of \$42,120 per new hostel bed excluding the cost of land acquisition.<sup>36</sup> The Commission retained the services of Maurice Robinson & Associates (the developer's current consultant) to verify the estimate. In 2015, the Commission's consultant confirmed that new hostel accommodations would cost an average of \$42,120 per bed, but found that new motel or hotel rooms would cost an average of \$100,000 per room considering the difference in sizes, occupancies, and amenities.<sup>37</sup> The Commission's consultant recommended both estimates be adjusted on an annual basis by comparing the Consumer Price Index (CPI) or Turner Building Cost Index (TBCI) of 2015 to future years to account for inflationary increases. The developer's consultant calculated an in-lieu fee that is generally consistent with this approach, but did not use the most recent TBCI nor indexed the in-lieu fee to future increases in the TBCI. In the latest feasibility report dated February 15, 2023, the consultant stated that the developer would agree to use a per-room fee of \$127,000. Multiplying this per-room fee by the minimum of 33 required lower-cost rooms produces the proposed total in-lieu fee of \$4,191,000. The City, County, and developer had since increased the in-lieu fee calculation to account for inflation, and the latest proposal is \$4,704,401. Yet if one were to use the most recent TBCI (first quarter of 2024) TBCI, then the per-room fee still increases to \$149,311, or a total in-lieu fee of \$4,927,263.<sup>38</sup> This should be even further adjusted in the future to reflect the most up-to-date TBCI at the time that the hotels are actually constructed.

The Commission has, at times, required that in-lieu fees include additional land acquisition costs, as this more completely reflects the amount required to ensure actual construction of lower-cost overnight accommodations. The Commission's consultant likewise recommended that land costs be calculated separately from construction in the in-lieu fee. But the subject case is unique in that the planned hotels would be constructed on public tidelands owned and managed by the County, and the City, County, and developer have proposed directing the in-lieu fees to specific third-party entities in the Harbor that are also located on public tidelands. As such, it is not necessary for the in-lieu fee calculations to

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<sup>36</sup> [5-18-0872](#) (Sunshine Enterprises, LP).

<sup>37</sup> See [Exhibit 5](#) of CDP 5-22-0799 (Ocean Avenue Partners, LLC and Belle Vue Plaza).

<sup>38</sup>  $1,408$  (TBCI in Q1 2024) -  $943$  (TBCI in 2015) =  $465 / 943$  (TBCI in 2015) =  $0.49311 * \$100,000$  cost per room in 2015 =  $\$49,311$  increase +  $\$100,000$  cost-per-room in 2015 =  $\$149,311$  cost-per-room in Q4 2023.

include the cost of land acquisition because in this case, the fee would not be needed nor used to purchase land.

More recently, the Commission has found that Robinson's approach to calculating in-lieu fees using the TBCI, as heretofore outlined, is likely to severely underestimate the actual construction costs of lower-cost rooms nowadays.<sup>39</sup> Construction costs in California's coastal zone have ballooned over the past few years, and therefore in-lieu fees are oftentimes insufficient in fully funding lower-cost overnight accommodation projects within the coastal zone, even for shovel-ready projects that do not require land acquisition and even when adjusting to account for increases in the TBCI.

A perhaps more analytically appropriate in-lieu fee would not be based on hypothetical industry standards, but rather would use the site-specific assumptions provided in the developer's consultant's feasibility analysis of what it would take to build a lower-cost unit as part of the proposed project. The consultant's most recent feasibility analysis estimates that a lower-cost unit would cost anywhere between \$308,636 and \$347,053 to develop at this site, depending on the eight project scenarios considered (for scenario 8, where all of the 33 required lower-cost rooms would be constructed onsite, the per-room estimate is the lowest at \$308,636). The per-room cost estimates were developed using a detailed series of metrics and assumptions, including the size of the lower-cost units, costs of materials, costs of FF&E (furniture, fixtures, and equipment), costs of providing parking, and many other budgetary line items. These estimates are likely to increase with inflation by the time that the hotels are constructed. In addition, entities that manage in-lieu fee accounts related to previous Commission-approved hotel projects, including but not limited to the State Coastal Conservancy, California State Parks, and Hostelling International, have expressed to the Commission that it is typical for administration costs to constitute at least ten percent (10%) of the lower-cost lodging and public access program costs. An adequate administrative fee is a necessary component of an in-lieu fee because identifying, developing, and managing an offsite lower-cost overnight accommodations project requires significant resources.

In other words, using a more site-specific approach to calculating in-lieu fees, the total in-lieu fee amount would be between \$11.2 million (lowest per-room estimate) and \$12.6 million (highest per-room estimate). This fee is multiple orders of magnitude (2.4x to 2.7x) greater than the original in-lieu fee calculated by the consultant and an in-lieu fee that uses the most recent TBCI (2.3x to 2.6x). Since this higher in-lieu fee amount is based on more precise assumptions related to the development costs actually necessary for a lower-cost units to be realized in this area, it represents a more accurate manner in which to assess an offsite in-lieu fee. Thus, in this case, using the TBCI-based method does not appear to capture the true cost of constructing lower-cost overnight accommodations on or near the project site.

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<sup>39</sup> Ref. [5-22-0799](#) (Ocean Avenue Partners, LLC and Belle Vue Plaza); [A-3-PGR-22-0004](#) (American Tin Cannery Hotel Resort).



Now, to calculate the offset that would be required for the rate differential of the 136 replacement hotel rooms, the Commission must determine the appropriate percentage of the total in-lieu fee. So, using 2022 rates, the statewide-defined ADR was equal to \$170.68, and the Marina Inn's annualized ADR was approximately \$186, therefore there was a rate differential of approximately \$15.32. This rate differential would have represented a 9.0% markup over the statewide lower-cost ADR at the time. This markup is what needs to be offset, and it can be converted into a nominal monetary amount through multiplying it by the above estimated site-specific in-lieu fee of \$11,452,749 (which assumes construction cost estimates for the Surf Lodge rooms under Scenario 8), for a total value of \$3,767,573.<sup>40</sup> Commission staff then took this value and analyzed its effects on the projected IRR of the hotel development, both in conjunction with providing the new 33 lower-cost hotel rooms at the statewide lower-cost threshold and also separately, and calculated that the decreases in IRR would be less than a percentage point.

In summary, and in light of the above conclusions about feasibility of Scenario 8, **Suggested Modification 1** is proposed to pinpoint specific project alternatives that would include a new lower-cost hotel component as required by Coastal Act Section 30213 (equal to 25% of the total market rate rooms). Based on the current proposal for 130 market rate rooms at the Dana House Hotel, the suggested modification ensures that at least 33 lower-cost rooms are provided. The suggested modification allows for flexibility in the hotels' final design in that the new lower-cost rooms may be additive (resulting in 163 total rooms at the Dana House Hotel), replace (resulting in 130 total rooms at the Dana House Hotel), or adjoined to the lower-cost replacement hotel (resulting in 169 total lower-cost rooms at the Surf Lodge). **Suggested Modification 2** also removes the City's specific reference to dormitory or hostel-style accommodations, as there is a strong need for additional standard lower-cost hotel rooms in the Dana Point coastal zone, especially on public tidelands, and conventional lower-cost rooms would still offer a range of affordability at various price points.

**Suggested Modification 1** specifies that the two hotels may be constructed concurrently, but the market rate hotel may not open or be operational prior to the opening of the lower-cost hotel to the public, which would prevent a future scenario whereby public tidelands would be exclusively used for market rate or high-cost overnight accommodations (even if temporarily). The City's proposed LCPA deletes the existing LCP language relating to the need for a future LCPA if there are further changes to the outlined lower-cost requirements, and the suggested modification would restore that language to ensure the protection of lower-cost overnight accommodations.

The Commission's statewide approach to defining lower-cost rate thresholds is typically 75% of the peak-season statewide ADR (adjusted for occupancy), but a regional economy-

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<sup>40</sup> The formula can be restated mathematically as such:

$$([\text{Actual ADR of replacement units (no higher than Marina Inn 2022 annualized ADR + CPI)}] - [75\% \text{ of peak-season statewide ADR}]) / [75\% \text{ of peak-season statewide ADR}] = \text{"markup," and } [\text{site-specific construction costs of lower-cost rooms}] * [\text{number of required lower-cost rooms}] = \text{"in-lieu fee"; therefore, } [\text{markup}] * [\text{in-lieu fee}] = \text{"rate differential offset."}$$

In this example,  $(\$186 - \$170.68) / \$170.68 * \$308,636 * 136 = \$3,767,573$ . Over the course of the anticipated 60-year life of the hotel, the offset would be \$62,793 per year.

rate approach could support the City and developer's proposal to price the rooms at the Surf Lodge at the Marina Inn's 2022 annualized ADR (plus CPI). The Commission finds that there is a need to offset this rate differential between the statewide and regionally-defined ADRs in order to truly consider these 136 rooms lower-cost within the context of Coastal Act Section 30213. The Commission contemplates utilizing the City/County/developer's previously proposed program in [Exhibit 7](#) to offset the higher room rates that are anticipated for the 136 lower-cost units at the Surf Lodge. **Suggested Modification 3** memorializes this approach in a new LUP Policy 5.2.1-23, which requires that this offset be directed to lower-cost overnight programming at Dana Point Harbor in line with what the City/County/developer's proposal included. Per the suggested modification, the monetary value of the offset will be based on the proportional difference between the statewide lower-cost ADR threshold and the actual rates charged at the hotel (the "markup"), as well as the site-specific construction cost estimates for the Surf Lodge rooms, which is outlined in the aforementioned formula. If and when the City issues a CDP for this development, the City would have to recalculate this formula using the latest data available.

The City, County, and developer have also previously argued that, from an environmental justice standpoint, programs can sometimes be superior to direct provision of lower-cost rooms because programs are often able to directly target underserved populations that would most benefit from lower-cost overnight opportunities. Conversely, Section 30213 prohibits the Commission from approving any method of income identification for lower-cost room eligibility, and there would be no practical way for the developer to discern whether the new 33 lower-cost rooms would actually go to lower-income and disadvantaged communities in the absence of any legal ability for the hotel to verify the income levels of guests. The Commission acknowledges that lower-cost rooms could be monopolized by high-income or savvy customers seeking rate discounts. It is also true that nonprofit organizations such as the Ocean Institute and the OC Sailing and Events Center have existing protocols and methods to establish program eligibility, and they have many tools at their disposal to directly cater lower-cost overnight opportunities to those in greatest need. For this reason, the Commission is supportive of the approach to include lower-cost overnight programming or in-lieu fees supporting such programming as part of the offset of the rate differential of the 136 replacement hotel rooms.

The Commission notes that the hotel developer may face challenges in appealing to target audiences for the new 33 hotel rooms provided at the statewide lower-cost threshold. One potential method may be focused outreach and marketing to community organizations focused on environmental justice communities, such as local non-profits, environmental justice groups, labor unions, or recipients of public benefits programs. The Commission has often required marketing and engagement plans to address this exact concern for projects that provided onsite lower-cost rooms in the past. Another approach is to consider constructing all lower-cost rooms and amenities in a separate building from all market-rate rooms and luxury amenities to disincentivize luxury-seeking visitors from capitalizing on the lower-cost rooms. This project alternative could be described as Commission staff's suggested Scenario 8. In short, the City, County, and developer have been made aware that there are methods to ensure that the 33 new lower-cost rooms, if and when provided, could be effectively marketed and offered to visitors with limited means, which the City may consider as conditions of approval in a future CDP.

## Proposed Lower-Cost Facilities and Amenities

As mentioned in Section IV.A (Amendment Description and Background) of this staff report, the City's submitted LCPA has outdated descriptions of the planned hotels and their related facilities/amenities. On November 30, 2022, the City submitted additional information that updates the project description, and which must therefore be incorporated into the LCPA. **Suggested Modification 1** would change the general description of the hotels in the LCPA, including the overall room counts and configurations, and clarifies which amenities are open to the public vs. hotel guests only. However, that suggested modification does not address the specifics of the facilities and amenities in each hotel, which is especially important for lower-cost rooms where they must conform with the requirements of Coastal Act Section 30213 and the LCP.

The City's most recent information describes the lower-cost hotel amenities as including a gym, guest laundry, outdoor barbecue area, in-room microwaves and refrigerators, ground floor bar and lounge, outdoor pool, and rooftop bar and lounge. A small commercial/retail market is also anticipated for the convenience of the lower-cost hotel guests. Based on a shared-parking assessment, the lower-cost hotel would provide 120 self-park stalls. The most recent draft of the project plans is attached as [Exhibit 4](#).

Twenty percent (20%) of the lower-cost guestrooms are proposed to be provided with connections to adjacent rooms for family guests. This project description reflects both existing LUP Policies 5.2.1-5 and 5.2.1-6, as well as the City's newly revised language in LUP Policy 5.2.1-4. The existing LCP language encourages longer visitor stays by providing guest amenities (living area, dining room, kitchen, clothes washers and dryers) in up to 20% of the guestrooms, and some hotel rooms may offer connections to adjoining rooms to allow multiple bedroom suites and provide accommodations for larger groups. The City's submitted LCPA removes the current LCP's reference to the specific 20% figure, but instead, states that the guest amenities and room connections "may" be included in the lower-cost hotel. The submitted language further specifies that certain amenities such as cooking and laundry facilities, which the existing LCP asserts should be in-room, would be communally provided instead.

From both public access and environmental justice perspectives, there is concern that the City's submitted LCPA would not provide adequate lower-cost visitor-serving facilities as required by Coastal Act Section 30213. For one, the City's proposed language would not require microwaves and refrigerators for all lower-cost rooms; in its denial of the Sunroad Hotel project proposal at the Port of San Diego (Ref. PMP-6-PSD-14-0003-2), the Commission found that many hotels already include amenities such as microwaves, refrigerators, Wi-Fi, and continental breakfast at no additional charge or at optional, minimal charges, and that the provision of lower-cost overnight accommodations must be "consistent with the Public Trust Doctrine" where public tidelands are concerned. Moreover, in its approval of the City of Dana Point's Short-Term Rental (STR) Program, the Commission made additional findings that accommodations that include full kitchen facilities "allow overnight visitors the option of preparing meals in[-house], a more

affordable option that dining out.”<sup>41</sup> There is also the idea of parity between the existing Marina Inn facilities and the new proposed facilities at the lower-cost Surf Lodge, as well as between the proposed Surf Lodge and the market rate Dana House Hotel (where possible). On a site visit at the Marina Inn on October 4, 2021, Commission staff learned that many of the existing hotel rooms have a microwave and minifridge. In the future, the Dana House Hotel is proposed to have large rooms and suites, many of which will also have in-room full kitchen facilities as a guest amenity, and the hotel is proposed to house a full-service restaurant. For the foregoing reasons, the Commission adopts **Suggested Modification 2** to clarify that all lower-cost rooms must include microwaves and refrigerators, and that all guests of the lower-cost rooms have access to the proposed communal outdoor barbecue area bordering Island Way, which the City, County, and developer have most recently proposed. The suggested modification would also clarify that communal laundry facilities are “self-serve,” as opposed to typical complimentary hotel housekeeping laundry services (for bedsheets, linen, etc.), or to more expensive dry cleaning or offsite laundry services. Together, these revisions will ensure that the lower-cost hotel guests have equitable access to lower-cost facilities and amenities consistent with Coastal Act requirements.

The suggested modification would separate out the proposal for room connections (multi-bedroom suites) and not make it a direct requirement for all lower-cost rooms, consistent with existing LUP Policy 5.2.1-6 (renumbered as Policy 5.2.1-5). Room connections do not raise public access and equity issues to the same degree as some other hotel amenities and facilities, so long as some room connections between the lower-cost rooms are actually proposed.

The Commission is also concerned with how guests of the lower-cost rooms could maximize recreational opportunities in the Harbor, particularly as related to coastal-dependent activities such as boating and aquatic sports. As stated in Coastal Act Section 30213, “[d]evelopments providing public recreational opportunities are preferred,” and Section 30210 states that “maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people.” In addition to the general public access and recreational improvements discussed in Section IV.C of this staff report (Public Access and Recreation), the Commission finds that the hotel development should specifically offer guests of the lower-cost rooms additional recreational benefits and amenities because 1) the proposed lower-cost rooms will be provided on public tidelands in a harbor area; 2) the 136 rooms replacing the Marina Inn are proposed to be offered at the existing hotel rates (subject to increases in CPI), which qualify as moderate-cost rates within the statewide context rather than lower-cost as required by the current LCP, and; 3) the guests of the lower-cost rooms may still be subject to paying parking or other fees associated with their stay.

When Commission staff communicated to the City, County, and developer the need to provide guests of the lower-cost rooms with no-cost recreational amenities such as boat, kayak, paddleboard, and bicycle rentals, the City and developer pushed back and instead recommended that such rentals be provided at a discount, rather than at no-cost. In

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<sup>41</sup> [A-5-DPT-22-0038](#) (Dana Point Short-Term Rental Program), p. 23.

particular, the developer is concerned that no-cost recreational rentals would not pencil out financially in conjunction with the room-rate requirements and all other public access and lower-cost overnight programming. While the overall expenses do not negate the need for the provision of adequate lower-cost visitor-serving recreational amenities, they are relevant in understanding the developer's hesitation as to whether it is actually feasible for the hotels to directly provide no-cost recreational rentals to guests of the lower-cost rooms. As a compromise, **Suggested Modification 3** would allow the hotel operator to collaborate with nearby businesses or co-operatives within the Harbor instead of directly providing such recreational rentals through the hotel(s), which may be less expensive to operate over the long-term. This suggested modification memorializes the need for no-cost or lower-cost recreational rentals made available to the guests of the lower-cost rooms, and it allows for flexibility as to the entity that would actually provide those amenities (new LUP Policy 5.2.1-16).

In conclusion, the Commission's suggested modifications are needed to ensure that the contemplated hotel development in Planning Area 3 of Dana Point Harbor is consistent with Coastal Act Sections 30210 and 30213 and protects and provides new lower-cost overnight accommodations. These modifications also ensure that overnight accommodations are a resource to the recreational value of the Harbor area and enhances the overall accessibility of the area, consistent with Chapter 3 of the Coastal Act.

### **C. Public Access and Recreation**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states:

Lower-cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30214 of the Coastal Act states, in relevant part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

...

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30234 of the Coastal Act states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30255 of the Coastal Act states:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.



The relevant policies of the City of Dana Point LCP (including LUP Policies 5.2.1-1 through 5.2.1-11) are shown in [Exhibit 1](#) and [Appendix B](#). Policies in Chapters 4 and 6 of the LUP and Chapter 14 of the IP are also applicable.

The Coastal Act and LCP require that high priority be given to public access and recreational uses and activities along the coast. In addition, the Coastal Act and LCP require that oceanfront land suitable for recreational use be protected for recreational use and development. The Coastal Act and LCP specify that coastal-dependent development and recreational uses are of the highest priority, including water-oriented activities that cannot be readily provided at inland areas. This is particularly important in public tideland areas. The Dana Point Harbor area, which is held in public trust owned and managed by the County of Orange, is limited to uses consistent with the Public Trust Doctrine, including navigation, fishing, public access, water-oriented recreation, open space and environmental protection, and incidental commercial use. These uses are all highly regarded in the Coastal Act and certified LCP. The Coastal Act and LCP also encourage the expansion of coastal-dependent and water-oriented recreational uses and activities and the facilities that support them, especially by increasing public launching and boating facilities and upgrading recreational boating facilities. To this end, the Coastal Act considers and encourages the utilization of innovative public access management techniques, including through the use of volunteer programs and agreements with private organizations that would minimize management costs.

The Dana Point Harbor area has multiple coastal waterways and open space areas that are accessible to the general public and support recreational opportunities, in particular water-oriented activities. These currently include a number of waterfront walkways (pedestrian promenades) and bike paths, public parks, several recreational marinas with a range of boat slip sizes and configurations, and launch sites for hand-carry watercraft (such as kayaks, canoes, paddleboards, etc.). The Harbor also presently includes lower-cost overnight accommodations, visitor-serving commercial centers (restaurants and shops), boater service facilities, and numerous parking structures available to the public. Finally, the Harbor provides a launchpad for fishing and whale watching excursions, the Catalina ferry, and provides a home to the Ocean Institute and OC Sailing and Events Center, which are nonprofit institutions providing marine education and programming.

In 2014, the City of Dana Point approved with conditions CDP No. 13-0018(I) for revitalization of the Harbor's Commercial Core, which focused primarily on demolition and construction of upland structures and improvements to landscaping, parking, and day-use boater launch sites, among many other project features. On September 9, 2020, the Commission approved with conditions CDP No. 5-19-0971 for a larger-scale remodel of the Dana Point Harbor, including both waterside and landslide areas.<sup>42</sup> This involved the replacement of 2,409 recreational boat slips with 2,254 recreational boat slips, replacement of fishing and yacht club slips, expansion of transient guest docks, relocation and reconfiguration of boat maintenance facilities (fuel dock, bait dock, boat wash station, and emergency dock), replacement of 11 boater service buildings with 10 boater service buildings, a reduction in designated boater parking from 1,644 to 1,410 spaces, and

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<sup>42</sup> Ref. [5-19-0971](#) (Dana Point Harbor Partners, LLC).



relocation and expansion of parkscape and public access areas closer to the water. As such, significant improvements to public access and recreation at the Harbor have recently been made.

The two new hotels contemplated by this LCPA could and should serve to further enhance public access and recreational opportunities at the Harbor, if done in concert with other Harbor improvements and per the requirements of the Coastal Act and LCP. While some of the City's proposed language amending the LCP would encourage additional public access and recreation opportunities as part of the planned hotel development, the LCPA must maximize pedestrian and bicycle connectivity, improve public access to the marina and waterways, preserve park spaces, add and improve public access and educational signage, and create new public amenities within the hotel buildings. As submitted, it does not maximize these uses. In consideration of promoting environmental justice, the City should also contemplate how to use this hotel development to provide greater access to the Harbor for underserved segments of the population, which have historically met barriers in accessing and recreating at the coast. This could be accomplished through participation of the hotels in existing community programming at the Harbor, or through forging new partnerships with local nonprofit and educational organizations.

There is also the issue that these privately-operated hotels would occupy public tidelands. While they would promote visitor-serving uses, the high-cost/market rate hotel, in particular, would be mainly available for high-income guests only. If not mitigated, the hotel development could potentially exclude large numbers of people from utilizing public tidelands, in contradiction of the Coastal Act and Public Trust Doctrine. Thus, in sum, LCPA No. 2-21 does not conform with the above-cited public access and recreation policies of the Coastal Act and LCP, which require that access and recreational opportunities be maximized and provided to all individuals. The following sections discuss aspects of the LCPA relating to public access and recreation in greater detail.

## **Public Trust**

Prior to the construction of Dana Point Harbor in the late 1960s and early 1970s, the area was originally a natural cove in Capistrano Bay, located between Dana Point Headlands and San Juan Creek. The area provided habitat for fish and invertebrates, and the sandy beach served as roosting and nesting habitat for shorebirds. The natural cove, Dana Cove, was also a popular surfing spot ("Killer Dana"). When the Harbor was built, tidelands were filled to create upland areas that could support the public's recreation on the remaining unfilled tidelands. Although the uplands that were filled tidelands would normally be under the Commission's jurisdiction, the Commission has delegated to the City permit authority for the filled tidelands pursuant to Section 30613 of the Coastal Act, and thus the LCP is the standard of review. The Commission retains original coastal development permit jurisdiction over unfilled tidelands.

Tidelands (filled and unfilled) and submerged lands are held in trust by the State for the benefit of the people for commerce, navigation and fishing. Such uses typically include the public's right to fish, swim, boat and engage in other forms of water-oriented recreation. Public use of boating infrastructure and other coastal-dependent recreational facilities

within ports, harbors, and marinas throughout the State is supported and encouraged by the public access and recreational policies of the Coastal Act as well as by the Public Trust Doctrine.

Title to lands under tide waters may be vested in the Sovereign as a public trust, to subserve and protect the public right to use them as common highways for commerce, trade and intercourse. Each state holds these lands in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein freed from the obstruction or interference of private parties. The State holds its Sovereign Lands in Public Trust for the benefit of the people. Each State defines its own public trust boundary and uses. The Public Trust in California has evolved and expanded over time to encompass changing public needs. California case law has established that in addition to the traditional “triad” of uses (navigation, commerce, fishing), it also includes the right to swim, boat, hunt, bathe, access, and engage in other forms of water recreation, as well as to use the bottom for anchoring or standing. This list of uses is not comprehensive as the Public Trust Doctrine is sufficiently flexible to encompass changing public needs.

Within the City of Dana Point, specifically, the County of Orange is the owner in trust of the tidelands and submerged land areas of the Harbor. As such, the County is required to manage the public trust through statute and implementation of the Public Trust Doctrine.<sup>43</sup> In 2018, the County entered a 66-year lease (expiring in 2084) with DPHP. DPHP is represented by the developer for the proposed hotel project (R.D. Olson Development). The lease allows for rental of a substantial portion of the Harbor, including the proposed project area (Planning Area 3).

Visitor-serving recreational facilities are encouraged in public tidelands, and are expressly allowed by DPHP’s lease with the County. Nevertheless, not all visitor-serving recreational development is consistent with the Public Trust Doctrine. While hotel development is open to the general public to stay overnight, which can enhance recreational uses on the coast, it is also true that such facilities, especially if high-cost, can act to exclude significant segments of the population. Thus, when reviewing this LCPA that would allow planned hotel development, which is located on public tidelands, the City must consider its scope and reach to assure consistency with not only the requirements of the public access and recreation policies of the Coastal Act and LCP, but also of the Public Trust Doctrine.

In this case, the City’s LCPA is contemplating the construction of a 136-room lower-cost hotel and a 130-room market rate hotel on a 9.5-acre site within the Harbor. Both hotels would be privately operated. The planned development presents an excellent opportunity to examine the way that overnight accommodations function for both public and private uses and to strike a balance that would maximize access and recreational opportunities for all users. In past actions, the Commission has found that when development is anticipated to have adverse impacts on public access, then it is appropriate to provide public access and recreational improvements to mitigate said impacts. This mitigation may be either in

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<sup>43</sup> Chapter 321 of the Statutes of 1961 was an Act of the State legislature granting tidelands in Dana Point Harbor to the County of Orange, with certain stipulations.

the form of direct public access and recreational improvements, or in-lieu fees disbursed to third-party entities that would undertake the same.

In addition to the area of public tidelands proposed to be used for the hotel structures themselves, the City, County, and developer also propose to convert an existing grassy lawn area bordering the intersection of Island Way and Dana Point Harbor Drive (at the entrance to the Harbor), which is currently open and available to public use ([Exhibit 3](#)), into a barbecue area that would only be available for guests of the Surf Lodge ([Exhibit 4](#)). While this barbecue area would provide a benefit associated with a lower- to moderate-cost hotel, it still privatizes public lands that could be used for public coastal access and recreation. The Commission finds that in order to address this loss of public lands, the hotel developer must be required to provide lower-cost visitor or recreational facilities elsewhere in Dana Point Harbor, as discussed below.

### Environmental Justice

The proposed project also raises environmental justice concerns related to the inequitable distribution of public access and recreation benefits in California broadly and Dana Point Harbor specifically. Ensuring maximum and equitable public access to the California coastline (as required by Coastal Act Sections 30210 and 30213) is consistent with the environmental justice principles reflected in the Coastal Act. The Commission adopted an Environmental Justice Policy in March 2019, thus considering principles of environmental justice, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal benefits are equitably distributed and accessible for all. In approving the policy, the Commission recognizes that equitable coastal access is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act. Taking an environmental justice approach to coastal policy requires a fundamental rethinking of who is connected to the coast, and how.

Historic inequalities, as well as California's growing population, changing demographics, socio-economic forces, judicial decisions, and policy choices continue to shape development patterns and population shifts that widen the disparity gap. Not only is equitable access to the coast for all Californians essential, so is protecting coastal natural resources for future generations. People become engaged in the protection of the coast when they have a connection with the coast. Robust public access and environmental justice policies thus bolster the Coastal Commission's mission to protect and enhance the coast for present and future generations.

In its approval of CDP No. 5-19-0971, the Commission found that the Harbor redevelopment would improve visitor-serving and recreational facilities that would increase coastal recreation and access benefits available primarily to higher income households, particularly in terms of recreational boating and sailing. Boat slip rentals at the Harbor have historically averaged approximately \$236 to \$1362 per month, depending on the length of the dock, and they require access to a private vessel.

Thus, to further increase access benefits to underserved communities, DPHP was required to contribute annual fees to fund an education and sailing program for a minimum of 1,000

underserved youths each year for the lifetime of the proposed development, memorialized as Special Condition 26 of said permit. The Commission found this requirement consistent with certified LUP Policy 6.3.1-1, which encourages the provision of a range of recreational programs to meet the needs of harbor visitors. The funded program is in collaboration with an organization which is designed to educate youth, with targeted outreach to recruit underserved youth from low-income and other underserved communities that lack equitable access to coastal resources. “Underserved youth” may include individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.

The program includes educational content on marine/ocean science, ocean recreation, marine debris, coastal access issues, and other ocean-related environmental issues targeted to elementary, middle-school, and high school ages from underserved communities in Orange County. The program also includes outdoor components, such as sailing, paddleboarding, swimming, surfing, bodyboarding, or kayaking to provide an interactive ocean education experience for the participants, and at least 10% of students are provided the opportunity to participate in a hands-on, multi-day sailing experience. The program also includes an evaluation component that has been used to inform the initial program design, as well as future iterations of the program in Dana Point Harbor, with the intent of it becoming a successful, scalable program to other coastal regions in California.

### Community Benefits Package

In promotion of environmental justice, the City, County, and developer have put together a public access and recreation benefits package amounting to approximately \$110,000 per year ([Exhibit 8](#)). The proposed initiatives are geared to improve public access and recreational opportunities in the Harbor. Possible programming may include providing no-cost or low-cost boating and recreational activities within the Harbor, sailing education for disabled persons, ocean access education for Title 1 students, exercise for fixed income seniors, indigenous land stewardship, and partnering with a local WHALE TAIL® grant recipient to provide annual community barbecues (food and beverage) at no cost.

As discussed in Section IV.B (Lower-Cost Overnight Accommodations) of this report, **Suggested Modification 3** requires the hotel developer to offset the differential between the proposed moderate-cost room rates at the Surf Lodge and the lower-cost room rates that were envisioned at the time of LCP certification and as required by the Coastal Act. The rate differential offset would be provided through direct lower-cost overnight access programming or as an in-lieu fee contribution, estimated at approximately \$62,800 per year using 2022 figures (which would need to be updated if and when the City issues the CDP). In addition, there will be some loss of public access through the privatization of the barbecue area for use by guests of the lower-cost hotel. This, too, requires the hotel developer to provide lower-cost recreational amenities to address the loss of this land for public access. The developer has proposed a total \$110,000 per year fee to support public access and recreation amenities in Dana Point Harbor. Thus, the Commission finds that

this annual package, if apportioned such that approximately \$62,800 in benefits would be used to offset moderate room rates, and approximately \$47,200 in benefits would address the loss of public access in the barbecue area, could be found consistent with Coastal Act and LCP public access and recreation policies.

**Suggested Modification 5** memorializes the developer's proposal through a new LUP Policy 5.2.1-20, which would require that a total contribution of \$110,000 annually for the life of the hotel development be directed to both community benefits related to public access and recreation and also those related to lower-cost overnight accommodations or programming. The public access and recreation benefits package would directly provide or fund any one of the various programs proposed in [Exhibit 8](#) and/or the Harbor's existing environmental justice initiatives (and is memorialized as new LUP Policy 5.2.1-22). The lower-cost overnight package, as described earlier in this staff report, would directly provide or fund any one of the various programs proposed in [Exhibit 7](#) (and is memorialized as new LUP Policy 5.2.1-23). **Suggested Modification 3** requires that the lower-cost overnight portion of the total package be calculated based on a formula that takes into account the rate differential and site-specific construction cost estimates of the replacement hotel rooms, which is also described in the previous section of the staff report. The remainder of the annual \$110,000 contribution would be apportioned towards public access and recreational opportunities as established in **Suggested Modification 5**. In sum, the Commission finds that this total benefits package offers adequate mitigation for the occupation of public tidelands, is supportive of the Commission's Environmental Justice Policy goals, and conforms with the public access and recreation policies of the Coastal Act.

### Public Amenities

There are numerous amenities within the proposed hotel development that would be open to the general public, and for which one would not need to be a paying hotel guest. For instance, restaurants, shops, and a new marina office are proposed to be incorporated into the hotel design. However, from the City's submitted LCPA, it is not clear which hotel amenities would be public vs. open to hotel guests only. As mentioned in Section IV.A (Amendment Description and Background) of this staff report, **Suggested Modification 1** would clarify that the new market rate hotel would include a public restaurant with up to 8,275 sq. ft. of dining area and 600 sq. ft. of ancillary public retail space. **Suggested Modification 5** further reinforces that beverage/food and retail service would be available to the general public.

The Commission finds that there are other opportunities to maximize public access within the hotel development, which is located on public tidelands, in order to be consistent with Coastal Act Section 30210. For instance, **Suggested Modification 5** would ensure that seating on common roof decks or terraces of the hotels would be open and free for the public to use at a minimum during hours of beverage/food service, which would reasonably maximize the general public's access to views and enjoyment of the site's oceanfront climate. Likewise, the hotel development could supplement access to nearby public areas in the Harbor, where people may participate in recreational activities, such as walking, birdwatching, observing harbor traffic and moored vessels, and launching a kayak or a

stand-up paddleboard. The submitted LCPA would allow for the lower-cost hotel to be reconstructed much closer to the waterfront to promote a stronger pedestrian connection with the Pedestrian Promenade and Festival Plaza. However, there is an opportunity to further enhance recreational uses; the Commission notes that, currently, the only place in the Harbor where the public can launch kayaks or stand-up paddleboards is at Baby Beach, approximately 0.3 miles to the west. The suggested modification would allow either a new hand-carry watercraft launch site to be developed near the hotels that is open to the public, or alternatively, the hotels would aid in the transportation of hotel guests and their equipment to the Baby Beach launch site. This would be consistent with Coastal Act Section 30220 and certified LUP Policies 4.3.1-1 and 6.3.1-6.

### **Recreational Boating**

Dana Point Harbor continues to serve as a marina for recreational boating, which is a highly prioritized use under the public access and recreation policies of the Coastal Act and certified LCP. The marina is located in public waters, but is a private facility operated by DPHP with berthing slips available to the general public on a month-to-month fee basis. The Harbor currently supports recreational boaters through the provision of boater service facilities (which may include showers, toilets, laundry machines, fish-cleaning stations, lockers, changing stalls, etc.), dry boat storage, and adequate parking facilities. The City's submitted LCPA raises concerns as to whether the new hotel development would be harmonized with recreational boating uses and the associated facilities.

### **Boater Service Facilities**

As part of CDP No. 5-19-0971, the Commission approved the replacement of 11 boater service buildings with 10 boater service buildings. At the time, the 11 buildings originally totaled 38,000 square feet, where the West Cove area had four buildings, Island West area had three buildings, and Island East had four buildings. The revitalization permit replaced and reconfigured the boater service buildings, providing a total of 10 boater service buildings for a total of 61,500 square feet. Six were to be constructed adjacent to the West Basin, equally distributed on Island West and Cove West, three were to be located on Island East, and one was to be in the Outer Basin replacing and enhancing the current restroom building. Within the West Cove, the existing four buildings and one small restroom building will be replaced with two 4,500 square foot buildings and one 6,000 square foot building. The buildings were to continue providing office space, yacht brokerage, marina operations, yacht and sailing clubs, boater restrooms, showers, and clothes washers and dryers.

As it pertains to the proposed LCPA, Boater Service Buildings 3 and 4 within PA 3 in the Harbor's East Cove would be incorporated within the planned hotel development, particularly within the market rate room hotel (Dana House Hotel). The existing LCP estimates that Boater Service Building 3 is approximately 3,600 sq. ft. and that Boater Service Building 4 is approximately 5,000 sq. ft., for a total of 8,600 sq. ft. (see Statistical Table 17-A in the IP). The proposed LCPA would allow for Boater Service Buildings 3 and 4 to be demolished, consolidated, and directly incorporated into the hotel development. The developer is specifically proposing that the new boater service facilities would be on the podium level of the market rate hotel that contain 3,800 sq. ft. of ancillary space for

boaters and 3,000 sq. ft. of meeting space/marina office, for a total of 6,800 sq. ft. The submitted LCPA would allow for the reduction in square footage.

From the proposed LCPA, it is unclear whether the new boater service facilities would provide the same level of service to the boaters, including the number of fixtures, appliances, and amenities. Coastal Act Section 30234 specifically requires that recreational boating facilities be protected (and, where feasible, upgraded), and that existing recreational boating harbor space “not be reduced **unless** the demand for those facilities no longer exists or adequate substitute space has been provided.” [Emphasis added.] As such, Commission staff asked the City, County, and developer to provide additional information regarding Boater Service Buildings 3 and 4 and their existing capacity. The information is summarized below:

**Table 4. Existing Boater Service Buildings 3 and 4**

<b>Existing Fixtures &amp; Appliances for Boaters</b>	<b>Existing Boater Service Building 3</b>	<b>Existing Boater Service Building 4</b>	<b>Total</b>
Men’s Showers	3	3	6
Men’s Toilets/Urinals	5	5	10
Men’s Sinks	4	4	8
Women’s Showers	3	3	6
Women’s Toilets	6	6	12
Women’s Sinks	4	4	8
Janitor’s Sink	1	1	2
Washer/Dryer Set	1	1	2
Vending Machine	1	1	2
Ice Machine	1	1	2
Water Fountain	1	1	2
Key Dock Dispenser	-	1	1
Spill Kit Station	-	1	1
Lockers	-	12	12

To estimate peak demand of the existing facilities, the City utilized the entry logs of boaters, who enter the existing buildings using a key fob to open an electronic lock that records the number of entries. While the duration of use for each entry is not known, assuming an average use of fifteen minutes, the City estimates that the maximum number of boaters that concurrently use the facilities is twenty persons (nine women and eleven men). The City also notes that Boater Service Building 3 contains a boater retailer, Sun



Country Marine Group, which has three employees, and that the Marina offices in Boater Service Building 4 has approximately four to five employees at any given time. The Marina offices in Boater Service Building 4 would be relocated outside of PA 3.

When Commission staff inquired about whether the reduced space in the new boater service facilities would also have reduced capacity/services, the City, County, and developer confirmed so. They noted that CDP No. 5-19-0971 allowed for the reduction of boat slips in the Marina, and therefore they propose that the new boater service facilities maintain services commensurate with the reduction in boat slips. The City, County, and developer propose the following reductions in fixtures and appliances:

**Table 5. Existing Boater Service Buildings 3 and 4**

<b>Fixtures &amp; Appliances for Boaters</b>	<b>Existing Boater Service Building 3 &amp; 4</b>	<b>Proposed Boater Service Facilities</b>	<b>% Proposed vs. Existing</b>
Men's Showers	6	4	66.7%
Men's Toilets/Urinals	10	8	80.0%
Men's Sinks	8	5	62.5%
Women's Showers	6	4	66.7%
Women's Toilets	12	8	66.7%
Women's Sinks	8	5	62.5%
Janitor's Sink	2	2	100%
Washer/Dryer Set	2	2	100%
Vending Machine	2	2	100%
Ice Machine	2	2	100%
Water Fountain	2	2	100%
Key Dock Dispenser	1	1	100%
Spill Kit Station	1	1	100%
Lockers	12	32	267%

The City, County, and developer note that the CDP allowed for 290 fewer boat slips specifically within the East Cove Marina, nearest to Boater Service Buildings 3 and 4, which corresponds to a 39.1% reduction in the number of slips. Therefore, the proposal is for the capacity of some of the new boater service facilities to be as low as 62.5% of the existing facilities, as seen in the above table.

However, the Commission notes that the reduction in boat slips does not necessarily equate to a reduction in demand. First, CDP No. 5-19-0971 allowed for significant increases in slip sizes. As a result, the larger boats that would dock at the East Cove

Marina slips could accommodate additional persons. Additionally, the overall reduction in the number of slips across the entire Harbor was much less acute, resulting in only 155 fewer slips (or a 6.4% decrease). Given that boaters from all over the Harbor could use the new boater service facilities, especially within the next few years as the Harbor revitalization efforts are still undertaken and other boater service buildings may be temporarily unavailable in other areas of the Harbor, then such a drastic reduction in services may not be appropriate. Finally, many boaters who are accustomed to using the existing facilities may wish to continue to use the new facilities at this location.

To find that the new reduced recreational boating facility space adequately meets the demand of at least twenty persons, the Commission finds that it is necessary to retain the existing quantity and quality of fixtures, appliances, services, and amenities, unless there is actual evidence that boater demand for such facilities has decreased. As such, **Suggested Modification 4** would ensure that new boater service facilities, which are consolidated and incorporated into the new hotel development, would preserve the capacity of the existing boater service buildings, and would only be reduced proportional to boater demand, thus consistent with Coastal Act Section 30234.

### Boater Parking

At present, there are 336 designated boater parking spaces within PA 3. The proposed development would reconfigure the designated boater parking and retain 178 designated boater parking spaces within the proposed hotel parking structures. While not part of the proposed project, local CDP No. 13-0018(l) includes the reconfiguration of all current surface parking areas in the adjacent Commercial Core area and will provide additional parking. Therefore, as proposed, the parking reconfigurations for designated boater parking would be consistent with certified LUP Policy 4.2.2-10 pertaining to the required boater parking in the Harbor, as well as with the Commission's action under CDP No. 5-19-0971. However, the submitted LCPA does not outright state the required number of designated boater parking spaces, and there could very well be a future proposal for further reduction in boater parking that is not under current consideration. To avoid such a scenario, **Suggested Modification 4** clarifies that boater parking must be consistent with the off-street parking standards and regulations of the LCP, as set forth in Chapter 14 of the IP.

### **Parking and Mobility**

Coastal Act Sections 30210 and 30252 require that new development promote adequate public access through the provision of adequate parking facilities or alternate modes of transit, and certified LUP Policy 4.4.1-5 requires that adequate public parking be maintained at the Harbor.

The developer retained the services of Michael Baker International, Inc. to prepare parking and traffic management plans, which have been revised to include a Shared Parking Assessment for the hotel project dated February 10, 2023. The developer is proposing 490 total parking spaces (302 spaces for hotel, hotel amenities, and boater service facilities, plus 178 dedicated boater spaces). Under Chapter 14 of the IP, 651 total parking spaces

are required, leading to a deficiency of 161 spaces. However, IP Section 14.5 does allow for exceptions and/or modifications to off-street parking requirements, provided that they do not adversely impact the availability of public parking for the affected area of the Harbor. IP Section 14.4 further specifies that if individual uses result in a parking demand more than what is currently provided in joint-use or shared parking facilities, then additional parking should be provided to adequately meet demand and/or alternative means to meet the parking demand through a revision to the required Detailed Parking Plan approved by the City and through the CDP process.

As described in Section IV.B (Lower-Cost Overnight Accommodations) of this staff report, the City, County, and developer studied eight site development scenarios in connection with the planned hotel development, five of them which were found to be feasible (Scenarios 1, 4, 6, 7, and 8). Each potential scenario would have a different number of rooms and configurations; therefore, each scenario would have different parking demand and need. Based on the assessment prepared by the developer's consultant, the majority of the scenarios would meet or exceed the projected weekday parking demand, except that Scenario 8 would have a parking shortfall of 15 parking spaces at the Surf Lodge. On the weekends, however, most of the scenarios would have a slight parking deficiency at the Surf Lodge, and Scenario 8 would have a shortfall of 24 parking spaces below the projected demand.

During discussions with the City, Commission staff indicated that it may be appropriate to decrease the allotted parking to allow for additional lower-cost overnight accommodations onsite, such as under Scenario 8. But according to Chapter 14 of the IP, the project would need to establish that an exception to, or modification of, the parking standards in the LCP would not adversely impact the availability of public parking for Planning Area 3 and the wider Harbor as a whole. As mentioned, one method to support an exception or modification to the required parking standards is to provide alternative means to meet the total parking demand, such as through a Transportation Demand and Management Plan (TDMP). Some ideas to accomplish this could include bicycle/scooter parking, strengthening multi-modal public transit connections, and establishing an employee parking program, many of which the Commission has supported in past actions.

The current LCPA does not explicitly include alternative transit and mobility solutions in connection with the planned hotel development. While elsewhere in the LCP there are existing policies that may be supportive of this approach (e.g., IP Section 14.2(k) requiring all parking facilities to include safe and secure bicycle parking), these policies may not be sufficient in providing a comprehensive alternative to the parking supply deficiencies that may arise under certain site development alternatives such as Scenario 8. As such, **Suggested Modification 7** recommends modifying the LCPA to include specific requirements about racks and charging stations available to accommodate electric bicycles and scooters, providing hotel guests with access to an on-demand regional service shuttle connecting to a public regional trolley<sup>44</sup> or public transportation service, and

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<sup>44</sup> The City of Dana Point runs a free trolley from late May/early June through Labor Day (and several weekends in September) that connects the Harbor to other free City shuttles. The free trolley service provides a way for the public to access the harbor without a personal vehicle, consistent with certified LUP

fully subsidized public transit passes to hotel employees who take public transit to work. Together in concert, these measures could address the potential for parking shortfalls during peak weekend demand.

Since alternative transit and mobility measures can be reasonably implemented to avoid adverse impacts to public access and parking, **Suggested Modification 4** removes the City’s suggested language that “emphasizes” adequate hotel guest parking, and instead it is modified to actually “provide” sufficient parking consistent with the off-street parking standards and regulations set forth in Chapter 14 of the certified IP. The suggested modification also ensures free parking for hotel employees; while hotel employees would be encouraged to use public transit with fully subsidized transit passes per **Suggested Modification 7**, there is concern that not all employees could feasibly arrive only using public transit, especially for those coming from outside Dana Point and from further inland. Paid employee parking raises issues of environmental justice, as many low-income workers cannot afford to live near the coast and must travel long distance to work on the coast; free parking would ensure that hotel employees are not facing barriers in reaching their workplace, especially during certain times when parking demand is high and parking spaces are difficult to find.

## D. Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The relevant policies of the City of Dana Point LCP (including LUP Policies 5.2.1-1 through 5.2.1-11) are shown in [Exhibit 1](#) and [Appendix B](#). Policies in Chapter 8 of the LUP are also applicable, including the figure in LUP Section 8.5 showing Harbor view corridors, attached in [Exhibit 5](#).

Policies of the Coastal Act and certified LCP protect public views and the scenic and visual qualities of the Dana Point Harbor. Coastal Act Section 30251 requires that visual resources in scenic areas be protected, and that new development be visually compatible with surrounding areas. In this case, public views of the subject site are available from Heritage Park and the Doris Walker Overlook, Lantern Bay Park, Cove Road/Dana Point Headlands, Island Way Bridge, public viewing platforms within the Harbor, and the

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6.2.1-2. For further information, see <https://www.danapoint.org/department/public-works-engineering/summer-trolley-service>.

Pedestrian Promenade. From Dana Point Harbor Drive, view corridors are currently available along Island Way, a park space bordering Island Way, and along Casitas Place. Some of the key viewsheds are considered “primary” and “secondary” in the LCP ([Exhibit 5](#)). The views that exist across the subject site are a valuable public resource, including those of the marina docks, boats, shoreline, and open ocean. Views are currently partially obstructed by the existing Marina Inn, but a redevelopment project with a larger footprint could have a potential significant effect on the remaining available public coastal view opportunities in the area.

As proposed, the development allowed by the LCPA would likely have both positive and negative impacts on public views and the visual character of the area as seen from Dana Point Harbor Drive and elevated viewpoints along the bluffs. As described above, the amendment would allow two new hotel buildings over a larger area and includes a substantial reconfiguration of parking and retail uses into multi-storied structures. The construction of the new hotel buildings raises concerns regarding the compatibility of the bulk and scale of the proposed structures with the surrounding pedestrian orientation and the current blockage of public views along the key public viewsheds toward the Harbor.

On April 3, 2023, the City and developer submitted a visual impacts study ([Exhibit 5](#)). The study examined the subject site (PA 3) from a large variety of key public viewpoints and viewsheds, and then replicated the analysis for the five feasible site development scenarios put forth by the developer’s consultant (Scenarios 1, 4, 6, 7, and 8). The City and developer suggested that the preferred alternative (Scenario 8, consisting of a 169-room lower-cost hotel and a 130-room market rate hotel) would not adversely compromise existing views in the surrounding area as viewed from protected vantage points. The Commission agrees, and based on the submitted study, concludes that all five scenarios would not significantly obstruct or degrade scenic views of the Harbor and surrounding areas. The only scenario that would appear to be visually incompatible with the character of the area and inconsistent with the existing pattern of development would be a maximum buildout of 220 lower-cost hotel rooms onsite, as currently allowed by the LCP (Scenario 3).

With respect to Scenario 8, the City, County, and developer initially claimed that such a scenario would be significantly more obtrusive in terms of mass, bulk, and scale, and for that reason, the developer initially preferred to construct the required 33 lower-cost overnight accommodations somewhere offsite or funded through an in-lieu fee. However, as discussed in Section IV.B (Lower-Cost Overnight Accommodations) of this staff report, the Commission evaluated the economic feasibility of this scenario and found it to be viable; in terms of this scenario’s visual resource impacts, they are comparable to other site development scenarios. The developer’s submitted analysis in [Exhibit 5](#) clearly shows that the additional adverse impacts are nearly imperceptible, and thus this scenario is consistent with the visual resource protection policies of the Coastal Act. For this reason, **Suggested Modification 1** is still recommended as a way to align the LCPA with both the visual resource and lower-cost overnight accommodation policies of the Coastal Act and LCP. The City, County, and developer have since agreed with Commission analysis and this suggested modification.

Additionally, the planned hotel development would include various elements that could improve visual resources. As shown in the draft project plans ([Exhibit 4](#)), the hotels would create public access and view corridors that allow visual and physical access and connectivity to the Harbor. The view corridors would be vertical (perpendicular to the shoreline) along the park space bordering the intersection of Island Way and Dana Point Harbor Drive, between the two hotel buildings, and through Casitas Place. These public accessways would be kept free of obstructions in perpetuity, except for the fenced-off outdoor barbecue area, which is anticipated to have no adverse impacts on visual resources. The project developer has also been amenable to other public activation amenities that enhance visual qualities and opportunities at the site, including constructing a small viewing platform on Island Way, seating on the terraces within the hotels, lighting and connectivity with the Pedestrian Promenade, educational and directional signage, and landscaping. These amenities could provide great benefits to members of the public while opening up new viewsheds and complementing protected viewpoints.

However, the City's submitted LCPA does not memorialize these positive project aspects and does not make it clear that views of the Harbor across this site are of public importance and should be protected to the greatest extent feasible. Thus, the visual resource policies in the proposed LCPA are not adequate to carry out the policies of the LUP and do not conform with the Chapter 3 policies of the Coastal Act. Therefore, **Suggested Modifications 5** and **6** include and build upon the developer's proposal to have a viewing station (with benches, viewing equipment, and educational signage), public access signage, seating on common roof decks and terraces of the hotels for public use at a minimum during hours that food and beverage service is available, and view corridors. **Suggested Modification 6** also specifies that the removal of trees and vegetation should not be removed to improve visual resources, and the removal of trees requires mitigation consistent with the LCP. As modified, LCPA No. 2-21 would meet the requirements of Chapter 3 of the Coastal Act and be adequate to carry out the policies of the certified LCP.

## E. Development

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water

reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act states:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.
- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.
- (c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30253 of the Coastal Act states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.



Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The relevant policies of the City of Dana Point LCP (including LUP Policies 5.2.1-1 through 5.2.1-11) are shown in [Exhibit 1](#) and [Appendix B](#). Policies in Chapters 7 and 8 of the LUP and Chapter 3 of the IP are also applicable.

The development policies of the Coastal Act, specifically Sections 30250 and 30253, together, encourage concentrating development in existing developed areas able to accommodate it to minimize vehicle miles traveled and prevent the excessive use of resources leading to waste. These policies are crucial because the new development considered by this LCPA may lead to increased car trips and vehicle miles traveled from activities relating to the proposed visitor-serving uses. Moreover, Coastal Act Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes, and Section 30231 requires that the biological productivity and quality of coastal waters be maintained to a level appropriate to maintain optimum populations of marine organisms and for the protection of human health. The new development considered by this LCPA may bring more visitors to the area which may lead to an increase in potential pollution related to trash and marine debris, thus adversely impacting water quality. The hotel structures themselves may also potentially affect nearby biological resources such as nesting birds and marine organisms. If not controlled properly, stormwater runoff from the development could result in the introduction of contaminants and hazardous substances into the nearby marine environment. Likewise, if the development uses materials such as transparent glass, then it could pose a risk of bird strikes. Finally, the subject development could be subject to coastal hazards exacerbated by sea level rise, and such risks must be minimized to conform with the requirements of Coastal Act Sections 30253 and 30270.

LCPA 2-21, as submitted, does not conform with and is not adequate to carry out the Chapter 3 development policies of the Coastal Act or the City of Dana Point LCP. The LCPA language does not address the policies highlighted above, and thus suggested modifications are needed to find the LCPA consistent with the standard of review, as discussed in more detail below.

### **Coastal Hazards, Flooding, and Sea Level Rise**

Coastal Act Section 30253 requires the minimization of risks to life and property in areas of high geologic, flood, and fire hazard. In addition, Coastal Act Section 30270 requires the Commission to account for sea level rise (SLR) in areas that may be affected. In sum, the Coastal Act and certified LCP require that new development minimize risk to life and property in areas of coastal hazards and require that new development minimize SLR hazards and consider the impact of development upon coastal resources over its full anticipated life, avoiding and mitigating those impacts as appropriate.

Given its low-lying and exposed location, the Harbor is prone to occasional flooding from rogue waves and strong storm conditions. SLR is expected to exacerbate existing coastal hazards by raising mean water levels, extending flood zones inland, and increasing the potential for marine erosion of bluffs and cliffs along the shoreline. SLR will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 1.4°F (0.8°C), and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research.

While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018).<sup>45</sup> These documents present probabilistic SLR projections as well as an extreme "H++" scenario for twelve locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. For projects that would have limited consequences if impacted by SLR or a relatively high ability to adapt, the guidance recommends analyzing a set of SLR projections called the "low risk aversion scenario," which has an estimated 17% chance of being met or exceeded according to current science. The medium-high risk aversion scenario, which has an estimated 0.5% chance of being exceeded, should be analyzed for projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development. Finally, the "H++" scenario (which has no calculated probability but is associated with research on potential extreme ice sheet melt) should be analyzed for critical infrastructure (such as sewer treatment plants and related infrastructure) and other projects that have little to no adaptive capacity, would be irreversibly destroyed or

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<sup>45</sup> The Ocean Protection Council (OPC) is currently in the process of updating the State SLR Guidance and statewide SLR projection based on evolving science, including the recently released [NOAA SLR projections](#). Among other details, the new NOAA report changes how the extreme SLR scenario (referred to as the H++ scenario) is discussed. The Commission continues to rely on the current statewide guidance while taking newer relevant studies under advisement in its decision-making, until such time that a new guidance update is adopted.

significantly costly to repair, and/or would have considerable public health, public safety, or environmental impacts if damaged or destroyed.

In this case, the subject hotel development would have lower capacity to adapt to SLR. To take a precautionary approach, statewide guidance recommends analyzing the medium-high risk aversion sea level rise scenario for a minimum 75-year project lifespan, which equates to 7.1 ft. of SLR by the year 2100 under current projections for the La Jolla Tidal Gauge (the closest tidal gauge to the project site).

In connection with the published EIR, the developer's consultant, Anchor QEA, prepared a coastal hazard and sea level rise analysis in January 2021 that updates a prior analysis completed in August 2019 for the entire Harbor.<sup>46</sup> The goal of the study was to understand whether the proposed hotel structures and associated development would be damaged or rendered unusable due to the effects of sea level rise. The analysis assumed a project lifetime of 75 years for the coastal structures and identifies coastal hazards to include extreme astronomical tides, storm waves, and storm surge, consistent with the Commission's approach outlined above.

The consultant's updated analysis concluded that future SLR could result in the inundation of the lowest occupied floor elevation of Dana House Hotel; this was based on the conservative medium-high risk scenario and an analysis horizon year of 2100. The consultant notes that the lowest floor of the proposed Dana House Hotel would consist mainly of unoccupied parking and enclosed, non-habitable back of the house functions (storage, laundry, employee lounge, etc.), along with the Dana House Hotel fitness area, and separately accessed non-habitable boater service facilities. None of the overnight hotel accommodations in either Dana House Hotel or Dana Point Surf Lodge would be subject to these inundation areas within the considered timeframe. In addition, the consultant pushes back on the assumption that the life of the proposed project would extend to 2100, as the existing lease between DPHP and the County only goes as far as the year 2084. As such, the consultant's overall conclusion is that the project would be safe from sea level rise hazards over its anticipated lifespan, and that the City or Commission could require additional adaptation strategies as needed.

However, the consultant's 2019 harbor-wide analysis found that a 100-year wave of 2.3 feet in the Outer Basin could potentially damage existing Harbor seawalls if the crest is not protected. It concluded that future sea level rise will cause the +9.8 NAVD88 seawall crest to be inundated by 2100, and as early as 2070. Since the Harbor seawalls and bulkheads protect the proposed hotel development from flooding hazards, and these protective devices may become endangered in the future, then adaptive measures such as floodproofing low-lying areas of the subject development must be considered. The City is required by LUP Policy 8.6.3-1 and IP Chapter 3 to prepare a Shoreline Management Plan, which must be updated periodically (every five years), and which must provide recommendations for protection of existing and proposed development, public

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<sup>46</sup> Alyssa Cannon and Adam Gale, Anchor QEA, LLC: Dana Point Harbor Revitalization – Coastal Hazards and Sea Level Rise Assessment. August 1, 2019.

improvements, coastal access, public opportunities for coastal recreation, and coastal resources, in light of hazards exacerbated by sea level rise. While the City's latest Shoreline Management Plan document was submitted in conjunction with CDP No. 13-0018(I) in September 2014,<sup>47</sup> the City has indicated that it will continue to update the Plan and make recommendations for future adaptation strategies with regard to Planning Area 3 and other vulnerable development elsewhere in the Harbor.

Coastal Act Section 30270 requires the Commission to take into account the effects of SLR in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse impacts of SLR. The City's certified LUP Policy 8.2.1-4 further requires that new development be designed and sited as to avoid hazardous areas and minimize risks to life and property from sea level rise, coastal, and other hazards. Together, these are taken to mean that the City should consider the effects of coastal hazards, as exacerbated by SLR, in the development of the proposed hotel project. Given that the City's submitted LCPA remains silent on the issue, **Suggested Modification 7** would add a new LUP Policy 5.2.1-19 that would require the two new hotels to be sited, designed, and constructed to avoid impacts to public access and to prevent flood damage and seawater intrusion from SLR over the hotels' anticipated lifespan, consistent with the development and SLR policies of the LCP and Coastal Act, as informed by the best available science. Any future adaptation measures that may be necessary must be consistent with any recommendations put forth by the City in the Shoreline Management Plan (or updates thereto). This would be particularly relevant for the proposed underground parking structure and below-grade or low-lying areas of the development, which in addition to SLR hazards might also need to consider a rising groundwater table. The new suggested policy would help protect important visitor-serving uses and would also minimize the potential for mobilization of substances that may adversely impact water quality during flood events. Without this suggested modification, the LCPA could not be found consistent with Sections 30253 and 30270 of the Coastal Act or the certified policies of the LCP.

### **Greenhouse Gas Emissions and Resource Consumption**

Another planning strategy that would minimize risks to life and property from SLR-related hazards, consistent with Coastal Section 30253 (a) and (d), is addressing the source of global warming—greenhouse gas (GHG) emissions. Constructing and operating major development, especially of commercial structures spanning more than 150,000 sq. ft. in total, could have an outsized impact on the use of energy, water, and resources. The LCPA, as submitted, does not include goals and policies that aim to encourage alternative modes of transportation, reduce vehicle use, or minimize resource consumption as part of the subject development.

As mentioned in Section IV.C (Public Access and Recreation) of this staff report, **Suggested Modifications 5** and **7** would result in increased non-automobile transportation options for visitors of the Harbor and employees of the subject development.

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<sup>47</sup> [Dana Point Harbor Revitalization Preliminary Shoreline Management Plan](#), published by Project Dimensions, Inc. in March 2014 (Rev. September 2014).

These include measures such as a free on-demand service shuttle for hotel guests connecting to a public regional trolley or public transportation service, fully subsidized public transit passes for hotel employees who take public transit to work, transportation services for hotel guests from the hotel site to the Baby Beach hand-carry watercraft launch site, and bicycle parking. **Suggested Modification 7** specifies that bicycle parking must include racks and charging stations available to accommodate electric bicycles and scooters. These measures, taken together, would help reduce vehicle miles traveled and GHG emissions.

**Suggested Modification 7** introduces additional new policies that would further aid in the reduced consumption of water, energy, and other resources while reducing plastic and food waste resulting from the operation of the proposed hotels and associated development. For instance, a new LUP Policy 5.2.1-9 would require that landscaping consist entirely of low-water and drought-tolerant vegetation consistent with the landscaping requirements of the LCP, which would help reduce water consumption and would minimize energy consumption from water delivery systems such as sprinkler systems. A new LUP Policy 5.2.1-13 would require that electric vehicle (EV) charging stations and parking stalls be included in new vehicle parking areas proposed, which would encourage electric vehicle use and incorporation of low-GHG technology to minimize energy consumption. For additional energy efficiency and reduced emissions, a new LUP Policy 5.2.1-14 would require conservation measures such as roof-mounted solar panels, as well as energy-efficient lighting, fixtures, and appliances. Finally, a new LUP Policy 5.2.1-15 would require the hotel operations minimize plastic consumption, waste, and litter through coordination of a Marine Debris Reduction Program, accomplished via membership in, or certification from, an established program. The suggested policy would also ensure that measures are undertaken to avoid and divert waste.

Therefore, as modified, the LCPA will be consistent with Section 30253(a) and (d) and the certified LCP policies relating to GHG emission reduction and sustainable development.

### **Biological Resources and Water Quality**

Sections 30230 and 30231 of the Coastal Act protect water quality and marine resources, and Section 30240 protects environmentally sensitive habitat areas (ESHA) and adjacent areas. As proposed, the LCPA does not include biological resource or water quality policies protecting marine resources or areas adjacent to environmentally sensitive habitat or park space.

In order to revise the LCPA to include adequate biological resource and water quality protections in connection with the proposed hotel development, **Suggested Modification 6** would protect the existing park space bordering Island Way near the proposed Surf Lodge, and would also require that any trees removed be mitigated consistent with the existing requirements of the LCP, which is at a 1:1 ratio. **Suggested Modification 7** would require that non-invasive and low-water, drought-tolerant vegetation be selected for landscaping, which would help minimize water runoff from irrigation and avoid the potential for the establishment of invasive species. A new LUP Policy 5.2.1-9 is also suggested to

encourage water conservation or reclamation measures as part of the hotel development, which would be consistent with Section 30231 of the Coastal Act. Finally, the suggested modification would include a new LUP Policy 5.2.1-8 requiring the use of bird-safe glass to prevent bird strikes, as well as a new LUP Policy 5.2.1-14 specifying that bird/marine environment-safe lighting, fixtures, and appliances in the proposed hotel development would be required.

With these modifications, the LCPA would have additional water quality control and landscaping requirements while protecting birds, open space, and the marine environment in the vicinity of the proposed hotel project. Thus, only as modified does the LCPA conform with the marine resource, biological resource, and water quality protection policies of the Coastal Act and the City's certified LCP.

## **F. California Environmental Quality Act**

The California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing CEQA documentation in connection with development of its local coastal program. (Pub. Res. Code § 21080.9; 14 CCR § 15265(a)(1).) The Commission notes that the City administered CEQA documentation, and as lead agency, issued a Notice of Completion (NOC) on April 30, 2021 for the Draft Environmental Impact Report (DEIR) published in association with this LCPA ([Appendix A](#)).

However, CEQA does not apply to the certification of an LCP by the Coastal Commission. (14 CCR § 15265(b).) The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the CEQA process. (14 CCR § 15251(f).) Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare CEQA documentation for certification of an LCP. Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCPA submittal, to find that the LCP, or LCP, as amended, does conform with relevant CEQA provisions, including the requirement in Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available that would substantially lessen any significant adverse impact which the activity may have on the environment. See also, CEQA Guidelines Sections 13542(a), 13540(f), and 13555(b).

As submitted, the proposed City of Dana Point LCPA is not consistent with the policies of the Coastal Act concerning public access, lower-cost overnight accommodations, recreational opportunities, public coastal views, coastal dependent development, and biological and marine resources. Suggested modifications have been added as described in this staff report. If modified as suggested, no significant adverse impacts to coastal resources will result from the LCPA. The Commission has reviewed and evaluated the proposed amendment, if modified as suggested herein, and finds that potential coastal resource impacts have been mitigated, and that the amendment does not have the potential to result in significant individual or cumulative impacts to coastal resources protected by the Coastal Act. Thus, with the inclusion of the suggested modifications, there are no further feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the amendment may have on the

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environment. The Commission therefore finds the proposed LCPA is consistent with the California Environmental Quality Act.

In addition, any specific impacts associated with individual development projects would be assessed through the environmental review process required by the Coastal Act at that time. Therefore, an individual project's compliance with CEQA is assured at the project-level through City and/or Commission review of applications for coastal development permits consistent with the City's LCP policies and/or Chapter 3 policies of the Coastal Act, respectively.



**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Draft Environmental Impact Report for the Dana Point Harbor Hotels; State Clearinghouse No. 2020099024

## APPENDIX B – SUGGESTED MODIFICATIONS (IN-TEXT)

For ease of reading, the suggested modifications outlined above have been incorporated into this Appendix B. The same suggested modifications are overlain atop the language submitted by the City per City Council Resolution No. 20-06-16-02 and City Council Ordinance No. 20-02, resulting in a more fluent format.

Normal Text= Existing unmodified language

~~Strikethrough Text~~= Proposed language to be removed (City)

Underline Text= Proposed language to be added (City)

~~**Bold Strikethrough Text**~~= Proposed language to be removed (Commission)

**Bold Underline Text**= Proposed language to be added (Commission)

### 1.1 Description of Dana Point Harbor Revitalization Plan

The amendment to this LCP establishes new land use policies and development standards that will allow for much needed upgrades to the visitor serving and marina services areas of Dana Point Harbor. As a result, the Dana Point Harbor Revitalization Plan has been planned and described as follows:<sup>1</sup>

The Dana Point Harbor Revitalization Plan (Revitalization Plan) establishes a new Visitor Serving Commercial area (the Commercial Core that includes the northerly portion of Planning Area 1 and Planning Area 2) that will replace and/or remodel all of the existing retail and restaurant buildings. The Commercial Core revitalization also includes the reconfiguration of all existing surface parking areas to provide additional parking, new boater loading and drop-off areas, a new dry-stack boat storage facility and improvements to several boater service and public restroom buildings. The initial phase of the proposed Dana Point Harbor Revitalization Plan provides for the relocation of certain yacht brokerage firms and other harbor-related offices to the new Commercial Core area.

Outside the Commercial Core area, the Dana Point Harbor Revitalization Plan provides for the future improvement of many of the existing Harbor facilities as funding sources are identified and jurisdictional approvals are obtained. Major components to enhance other Visitor Serving and Marine Commercial amenities are the replacement of the outdated Marina Inn with a new hotel complex which may include two new hotels; ~~complex with an upgraded hotel~~; the future renovation and/or expansion of the boater facilities on the Island, including expansion of the Dana Point and Dana West Yacht Clubs, restaurant renovations and modifications to the Harbor Patrol Offices to provide additional meeting rooms or staff office space; expansion of the OC Sailing and Events Center; and an upgraded boat shipyard. Other work anticipated to be performed includes the reconfiguration and/or reconstruction of the docks and needed repairs to portions of the seawall throughout the Marinas. Although specific ideas haven't been developed at this time, some harbor

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<sup>1</sup> This Local Coastal Program contains extensive description of planned future development (e.g. the Dana Point Harbor Revitalization Plan). However, the presence of those descriptions does not constitute any entitlement for the improvements described. All future non-exempt development will need to be reviewed, in the context of an application for coastal development permit, for consistency with the policies of this Local Coastal Program. The development ultimately approved may or may not be consistent with the descriptions provided herein.

users have identified a need to upgrade and expand facilities at Baby Beach to meet the growing needs of hand launched vessels and to expand the level of access for non-boating day use visitors as feasible. Policies in this plan encourage maintenance and improvement of such uses In the Harbor.

The proposed Dana Point Harbor Revitalization Plan Improvements are planned to occur in phases over approximately 5 to 20 years. The near-term improvements to the Commercial Core area (also referred to as Phase 1) are estimated to take approximately 2 to 5 years to complete after obtaining the necessary Jurisdictional approvals. The long-term improvements (referred to as Phase 11) are anticipated to include revitalization of the marinas, renovations to existing structures, street and infrastructure improvements, the reconfiguration of the area presently used for non-shipyard related activities to provide space for boat storage.

The Revitalization Plan has been developed with the specific intent of promoting Coastal Act compliance by enhancing public access opportunities, providing updated visitor serving commercial and marine recreational amenities, providing water quality improvements and promoting coastal resource preservation throughout the Harbor.

## 2.1 Overview

The Land use Plan for Dana Point Harbor is summarized on the Summary Table (Table 2-1) and shown on Exhibit 2-1, *Land Use Summary Table and Dana Point Harbor Land Use Plan*, respectively.

Table 2-1  
LAND USE SUMMARY TABLE

Land Use Category	Planning Area	Gross Acres	Percent of Total Harbor
Marine Services Commercial (MSC)	1	24.0	9.2
Marine Services Commercial Recreation (R)		1.2	
Day Use Commercial (DUC)	2	18.1	6.5
Visitor Serving Commercial (VSC)	3	9.5	3.4
Marine Commercial (MC)	4	21.2	9.3
Marine Commercial Recreation (R)		4.4	
Recreation (R)	5	21.1	7.6
Educational/Institutional (E)	6	3.6	1.3
Conservation (C)	7	4.0	1.4
Education Basin	8	169.7	61.3
West & East Marinas	9, 10		
Marine Services & Harbor Entrance (M)	11, 12		
Totals:		276.8	100.0

## LCP-5-DPT-21-0079-2 (Dana Point Harbor Hotels)

The Dana Point Harbor Revitalization Plan would allow a new Visitor Serving Commercial Area (the Commercial Core) that includes the replacement and/or remodeling of all existing retail and restaurant buildings. The Commercial Core revitalization would also allow the reconfiguration of the main Marine Services Commercial area to provide enhancements to surface parking areas, new boater loading and drop-off areas, a dry stack boat storage facility and improvements to several boater service and public restroom buildings. The reconfiguration would also allow the relocation of certain yacht brokerage firms and other Harbor-related offices to the Commercial Core area (Planning Area 2) of the Harbor.

Outside the Commercial Core area, the Dana Point Harbor Revitalization Plan would provide for a number of future improvements (the remaining portion of Planning Area 1 and Planning Areas 3 through 7 [landside] and 8 through 12 [waterside]). Planning Area 3 currently houses one 136-room, lower cost hotel. This hotel may be replaced with a new lower cost hotel pursuant to the LCP policy requirements in Section 5.2 includes the potential for one new hotel with lower cost overnight visitor accommodations with a minimum of 136 rooms. In addition to the replacement lower cost hotel, and a second new market rate hotel with up to 130 market rate rooms. Planning Area 3 also includes the potential for conference facilities, and other visitor serving amenities may be constructed in Planning Area 3 as long as additional lower cost overnight accommodations are provided pursuant to the LCP policy requirements in Section 5.2. Planning Area 3 plans include the potential for a new hotel with conference facilities in addition to providing up to 220 new guest rooms and other visitor serving amenities. Plans for the Island area of the Harbor (Planning Area 4) would allow for the future renovation and/or expansion of the Dana Point and Dana West Yacht Club, restaurant renovations and modifications to the Harbor Patrol Offices to provide additional meeting rooms or staff office space. Other work would be allowed to reconfigure and/or reconstruct the marina docks and portions of the seawall in Planning Areas 8 through 12 and to add additional guest boater docks closer to the Commercial Core with a dinghy dock area adjacent to Dana Wharf, subject to a separate permitting and environmental review process.

The anticipated improvements that would be allowed by Dana Point Harbor Revitalization Plan would occur in phases over approximately 5 to 20 years. The near-term improvements (referred to as Phase 1) are estimated to take approximately 2 to 5 years to complete after obtaining the necessary jurisdictional approvals and consists of the northerly portion of Planning Area 1 and all of Planning Area 2, collectively referred to as the "commercial Core area of the Harbor" ("Marine Services Commercial" - the Embarcadero and shipyard area and "Day Use Commercial" - The Dana Wharf and Mariners Village areas). The long-term improvements (referred to as Phase 11) are anticipated to commence as funding sources are identified and jurisdictional approvals are obtained and consists of future improvements in Planning Areas 3-12 including renovations to structures and street improvements on the Island and reconfiguration of the Marinas. Future improvements may also occur in the southern portion of Planning Area 1 and includes reconfiguration of the area used for non-shipyard related activities such as boat storage, boat brokerages, jet-ski rentals and sales and hand launch vessel rentals to be included as part of the Revitalization Plan's surface boat storage area. There is also an existing park at this location that will be maintained and protected.

The Dana Point Harbor Revitalization Plan has been developed with the specific Intent of promoting Coastal Act compliance by enhancing public access opportunities, providing updated visitor serving commercial and marine recreational amenities and promoting coastal resource preservation throughout the Harbor.

## 2.2 Land Use Designations.

### Commercial

#### **VISITOR SERVING COMMERCIAL (VSC)**

The Visitor Serving Commercial (VSC) designation is intended to provide a variety of visitor serving commercial overnight accommodations and ancillary uses and facilities in addition to visitor serving commercial, recreation uses and facilities supportive of the general community and serve the regional recreational needs of residents and guests of the County of Orange, City of Dana Point and visitors to the coast.

The VSC designation allows uses such as:

- Overnight visitor accommodations;
- Retail sales (Includes outdoor retail);
- Boat docks;
- Boater Service facilities, including restrooms, laundry and storage;
- Parking areas and structures;
- Cafes, restaurants, vending machine food and beverage centers;
- Other uses and professional services or facilities customarily found in a hotel;
- Travel and commercial recreation services and uses;
- Public and commercial recreation facilities;
- Seasonal water taxi service facilities;
- Facility information offices and centers, Information kiosks;
- Public works structures necessary for the permitted development;
- Communication facilities; and
- Public restrooms.

The Dana Point Harbor Revitalization Plan would allow the future replacement of the existing lower cost Marina Inn with a new lower cost hotel wherein the number of existing rooms is maintained or exceeded within the new lower cost hotel, and all new rooms are offered at lower cost rates in perpetuity facility; and thereafter, the construction operation of another new market rate hotel, with both hotels located closer to the waterfront than the existing hotel to promote a stronger pedestrian connection to the anticipated Pedestrian Promenade and Festival Plaza.

~~The Dana Point Harbor Revitalization Plan would allow the future replacement of the existing lower cost Marina Inn with a new lower cost facility located in the present hotel location or relocated closer to the waterfront to promote a stronger pedestrian connection with the anticipated Pedestrian Promenade and Festival Plaza.~~

The boater facilities located adjacent to the revitalized Commercial Core and hotels would be allowed to be reconfigured to provide a linear park. Other enhancements to the boater facilities include upgrades to restrooms and laundry facilities, **expansion consolidation** of office **space square footage** and the reconfiguration of surface parking areas. Associated with the design of the hotel, several boater service buildings may be relocated, and/or **replaced incorporated within the hotel buildings. Changes in the square footage of the boater service buildings may be allowed, so long as the quality and quantity of the services and fixtures provided are preserved in proportion to observed boater use.**

5.2 Overnight Visitor Accommodations and Recreational Facilities (R)

The Dana Point Harbor Revitalization Plan contemplates the construction of two new hotels. One hotel will be a lower cost ~~overnight visitor accommodations and provide no fewer of not less than 136 lower cost rooms, plus additional lower cost overnight accommodations or lower cost amenities that may be required.~~ The lower cost hotel will replace at minimum the 136 rooms of the existing Marina Inn with a new facility located closer to the waterfront to promote a stronger pedestrian connection with the Pedestrian Promenade and Festival Plaza. The lower cost ~~hotel~~ **overnight visitor accommodations** is planned to provide additional guest **in-house** amenities, including an expanded lobby area with guest services, ~~a communal kitchen microwaves and refrigerators in each guest room,~~ ground floor beverage service and seating, upper floor beverage and food services and seating, fitness center, retail space, swimming pool, lockers and **self-serve laundry facilities. A communal fenced barbecue area may be provided between the lower cost hotel and Island Way.**

The second hotel is **intended to be** market rate and shall provide up to 130 rooms, **in addition to floor area** up to 8,275 square feet of **public restaurant and kitchen space dining area**, up to ~~68,000~~ square feet of special function and meeting rooms with a banquet kitchen **available to guests of both hotels**, 600 square feet of ancillary **public** retail space, **and** a 1,700 square foot fitness center, and other outdoor activity facilities. **A minimum of one-quarter (25 percent) of the number of market rate rooms shall be offset by providing lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms). Either ~~within or adjacent to~~ the market rate hotel structure, boater service facilities of not less than 6,800 square feet will be provided, and parking designated for boaters will be provided, consistent with off-street parking standards and regulations set forth in the Dana Point Harbor Revitalization Plan & District Regulations.**

~~The Dana Point Harbor Revitalization Plan contemplates the future replacement of the existing Marina Inn with a new facility located in the present hotel location or relocated closer to the waterfront to promote a stronger pedestrian connection with the Pedestrian Promenade and Festival Plaza. The new hotel is planned to provide up to a maximum of 220 guest rooms with full service guest amenities, including expanded lobby area with guest services, 2,750 square foot restaurant, and up to 12,000 square feet of special function and meeting rooms, 500 square feet of ancillary retail space, a 1,500 square foot fitness center, pool and other outdoor activity facilities.~~

The final design of the lower cost overnight visitor accommodations may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations,. **All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-serve washers and dryers, and dormitory or hostel style accommodations.** A majority of rooms would have private decks, **juliette balconies, or full balconies** for guests to take advantage of the views and oceanfront climate.

~~In addition to traditional hotel accommodations, the proposed hotel may include suites (up to 20 percent of the total number of rooms) that provide families with a bedroom, living area, dining rooms, kitchens, clothes washers and dryers. The final design of the hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations. The new hotel rooms would have private decks or balconies for guests to take advantage of the views and~~

oceanfront climate. These suites would be intended to encourage longer visitor stays, particularly for families with children.

The Dana Point Harbor Revitalization Plan anticipates at some time in the future, plans will be prepared by interested parties to replace the existing Marina Inn. Conceivably, any future plans, in addition to offering overnight accommodations would also include ancillary services, **including some open for public use**, intended to enhance the financial viability of the facility and attract patrons **and members of the general public**.

The architectural character of the hotels will need to be compatible with the California Coastal theme of the new planned Commercial Core, possibly including terraced levels of buildings in various configurations to maximize views and break up building massing as viewed from surrounding vantage points. **The design shall preserve view corridors as seen from Dana Point Harbor Drive towards the Harbor, between the two hotel buildings, and through Casitas Place, to the maximum extent feasible. Tree removal shall be minimized, shall not be used to enhance private views or to offset impacts to public views, and shall require mitigation as required by the Local Coastal Program. Landscaping and plant palette selection on the hotel site shall consist entirely of low-water, non-invasive, drought-tolerant vegetation, consistent with the landscaping provisions of the Local Coastal Program. The development shall minimize and control runoff and wastewater discharges, and water conservation or reclamation measures are encouraged when in accordance with all relevant local and state policies.**

The hotel's building design would also **emphasize providing** adequate parking for guests and maintaining convenient access to parking areas for boaters, **consistent with off-street parking standards and regulations set forth in the certified Dana Point Harbor Revitalization Plan & District Regulations**. Parking areas may be provided using a combination of at-grade parking lots and some underground parking facilities, allowing direct access to the Harbor and hotel facilities. A parking deck with access directly from Dana Point Harbor Drive, Casitas Place or the Commercial Core area may also be considered as part of the overall hotel design to separate the main guest entrances from service and delivery functions. **Hotel operators shall provide hotel guests with access to a free on-demand regional service shuttle connecting to a public regional trolley or public transportation service, and hotel employees who take public transit to work shall receive fully subsidized public transit passes. Electric vehicle (EV) charging stations and parking stalls shall be allocated throughout both hotel parking areas; in addition, onsite bicycle parking shall be provided, including racks and charging stations available to accommodate electric bicycles and scooters. To reduce long-term operation emissions from area sources, the hotel design shall implement energy conservation measures, such as roof-mounted solar panels, energy-efficient and bird/marine environment-safe lighting, fixtures, and appliances. Hotel operations shall minimize plastic consumption, waste, and litter. The two new hotels shall be sited, designed, and constructed in a manner that does not adversely impact public access and that prevents flood damage and seawater intrusion from sea level rise over the course of their life spans, consistent with the development and sea level rise policies of the Local Coastal Program and the Coastal Act, and as informed by the best available science.**

Planning Area 5 includes a potential expansion of the OC Sailing and Events Center, which currently offers meeting rooms for recreational activities, community events and private parties, as well as sailing and ocean-related educational and instructional programs. The OC Sailing and Events Center may ultimately increase by approximately 6,000 square feet to a total of 17,000 square feet. There may be a seasonal water taxi pick-up/drop-off station adjacent to the facility. Additionally, locations for the provision of low-cost boating activities, including hand launch vessel



rentals and marine sightseeing excursions the operation of sports fishing and/or charter boat concessions may be provided. Other enhancements include picnic area improvements, upgraded restrooms and reconfigured parking areas.

**Community benefits shall be included as part of the replacement of the existing hotel complex in Planning Area 3. As part of the Harbor revitalization coastal development permit (CDP No. 5-19-0971), an education and sailing program for underserved youth<sup>2</sup> is required per Special Condition 26. The program sets forth the provision of scholarships for underserved youth to participate in educational curricula for sailing, paddle boarding, swimming, surfing, bodyboarding, and/or kayaking, and a minimum of 10% of eligible students are provided the opportunity to participate in a hands-on, multi-day sailing experience. To complement these initiatives, the hotels planned for Planning Area 3 shall participate in these, or similar, programs annually, for the life of the hotel development, by contributing financially to expand and/or improve existing programming for underserved youth in Dana Point Harbor as required by the Harbor revitalization CDP. The hotels shall also directly participate in additional public access and recreational programs for underserved communities for the life of the hotel development as required in LUP Policy 5.2.1-22. The total value of contributions to these programs shall equal or exceed \$110,000 annually, and the hotels shall ensure adequate transportation for program attendees.**

**Additionally, if the lower cost replacement hotel will offer room rates higher than three-quarters (75 percent) of the peak season (average of July and August) statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons, but equal to or less than the 2022 annualized average daily rate of the existing Marina Inn (adjusted for inflation using CPI), then the hotel development shall maximize the public's access to lower cost overnight accommodations on the coast by directly providing or funding lower cost overnight programming at no cost for underserved youth and their families, such as partnering with the Ocean Institute and/or OC Sailing and Events Center to provide a free coastal-themed overnight camping experience to underserved youth, expanding and upgrading lower cost overnight accommodation facilities at the OC Sailing and Events Center and/or Ocean Institute, providing hospitality internships, or any combination thereof.**

**The hotels in Planning Area 3 shall directly offer kayak, paddle board, bicycle, and similar recreational rentals at no or discounted costs to guests of the lower cost rooms; alternatively, collaboration with nearby businesses or co-operatives may be allowed. The hotel site shall provide a new designated launch location for hand-carry watercraft open and available to the public at no cost near the intersection of the Pedestrian Promenade and Island Way or at the nearest suitable location; or, alternatively, the hotel shall provide and conspicuously advertise free transport of hotel guests and their hand-carry watercraft to the existing launch site at Baby Beach. To increase public enjoyment of the Harbor, the hotel operators shall also construct and maintain, in perpetuity, at least one free public viewing station along Island Way, with accessory seating, telescopes, and signage that clearly**

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<sup>2</sup> **The term "underserved youth" shall be defined as individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.**

**indicates public access and provides educational components. All public access signage shall be provided in multiple languages. Other public access ways and points required by the Local Coastal Program shall be identified in a Public Access Management Plan for Planning Area 3 and provided for in concert with redevelopment of the site.**

Contemplated circulation and access improvements in future phases of the Harbor Revitalization Plan may include the realignment of Dana Point Harbor Drive adjacent to the proposed facility to remove the existing traffic circle to Improve traffic circulation. Currently, Cove Road provides secondary access to the Harbor.

5.2.1-1 Harbor visitor serving and overnight accommodations (Planning Area 3) will be enhanced by potential replacement ~~and/or remodelling~~ of the hotel complex with two new hotels to include conference and recreational facilities and amenities, **as well as beverage/food and retail service that is available to the general public.**

5.2.1-2 If demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) in the Harbor is proposed, all 136 demolished units shall be replaced in the area designated as visitor serving commercial by the Dana Point Harbor Land Use Plan with a minimum of 136 of equal or lower cost hotel rooms, which shall remain available to the public as lower cost hotel rooms in perpetuity than the existing lower cost units to be demolished. A new and separate market rate hotel of up to 130 rooms may be constructed. The hotels may be constructed concurrently, but the market rate hotel may not open or be operational prior to the opening of the lower cost hotel to the public. To mitigate any absence of lower cost overnight accommodations at the new and separate market rate hotel, additional lower cost overnight accommodations or amenities above the 136 rooms may be required. A minimum of one-quarter (25 percent) of the number of market rate rooms shall be offset by providing lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms). Conversion of any existing units to high cost, replacement of any existing units with anything other than lower cost and construction of any/new additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals. Conversion of any lower cost overnight accommodations, as defined in LUP Policy 5.2.1-21, to anything other than lower cost, replacement of any lower cost overnight accommodations with anything other than lower cost, and construction of any new/additional units that are anything other than the overnight accommodation units heretofore described, shall require a Local Coastal Program Amendment.

5.2.1-3 The conversion of any existing overnight accommodations located on public tidelands to timeshares or condominium/hotel units or any other type of Limited Use Overnight Visitor Accommodations shall be prohibited. The construction of new timeshares or condominium-hotel units or any other type of Limited Use Overnight Visitor Accommodation on public tidelands shall be prohibited. Limited Use Overnight Visitor Accommodations are any hotel, motel or other similar facility that provides overnight visitor accommodations wherein some or all of the units, rooms, lots or parcels or other segment of the facility may be sold to a subsequent purchaser who receives the right in perpetuity for life or a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s) or segment of the facility, annually or on some other seasonal or periodic basis for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to timeshare, condominium/hotel, fractional ownership hotel or uses of a similar nature.

~~5.2.1-4 Harbor visiting serving and overnight accommodations (Planning Area 3) will be enhanced by potential remodeling and/or replacement (if remodeling isn't feasible) of the hotel complex to potentially include conference and recreational facilities in addition to providing up to 220 new guest rooms and amenities.~~

5.2.1-4 The design of the lower cost overnight visitor accommodation hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations, All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-serve clothes washers and dryers to encourage longer visitor stays, particularly for families with children. Dormitory or hostel style accommodations may also be provided in addition to the lower cost overnight visitor accommodations provided as rooms.

~~5.2.1-5 The design of any renovated or new hotel in addition to traditional guest accommodations may encourage longer visitor stays, particularly for families with children by providing up to twenty percent (20%) of the total number of rooms with guest amenities in addition to a bedroom that include a living area, dining room, kitchen, clothes washers and dryers.~~

~~5.2.1-6 Some hotel rooms may provide accommodations for larger groups by offering connections to adjoining rooms allowing multiple bedroom suites.~~

5.2.1-7 The design of hotel rooms shall incorporate wherever possible the use of private decks, Juliette balconies, or full balconies to allow guests to take advantage of the Harbor views and enjoy the oceanfront climate. To maximize the general public's access to views and enjoyment of the oceanfront climate, seating on common roof decks or terraces shall be open and free for the public to use at a minimum during hours of beverage/food service.

5.2.1-8 The design of the hotel will be compatible with the California Coastal design theme of the Commercial Core area and terraced levels of buildings in various configurations to maximize public views and break up building massing as viewed from the surrounding public vantage points shall be encouraged as part of the design. The design shall preserve view corridors as seen from Dana Point Harbor Drive towards the Harbor, between the two hotel buildings, and through Casitas Place, to the maximum extent feasible. To increase public enjoyment of the Harbor, the hotel operators shall also construct and maintain, in perpetuity, at least one free public viewing station along Island Way, with accessory seating, telescopes, and signage that clearly indicates public access and provides educational components.

5.2.1-8 Where glass or other clear material is used for guardrails or other architectural features, it shall be etched, tinted, or otherwise modified to make it visible to birds to prevent bird strikes.

5.2.1-9 Landscaping and plant palette selection on the hotel site shall consist entirely of low-water, non-invasive, drought-tolerant vegetation, consistent with the landscaping provisions of the Local Coastal Program. The development shall minimize and control runoff and wastewater discharges, and water conservation or reclamation measures are encouraged when in accordance with all relevant local and state policies. Tree removal shall be minimized, shall not be used to enhance private views or to offset impacts to public views, and shall require mitigation as required by LUP Policy 7.1.2-3 and IP Chapter 21.

5.2.1-9 ~~810~~ The hotel building design shall emphasize providing adequate parking for guests and free parking for hotel employees, as well as maintain convenient access to parking areas

for boaters, consistent with off-street parking standards and regulations set forth in Chapter 14 of the Dana Point Harbor Revitalization Plan & District Regulations.

5.2.1-40-~~911~~ A parking deck with access directly from Dana Point Harbor Drive, Casitas Place or the Commercial Core area may be considered as part of the overall hotel design to separate the main guest entrances from service and delivery functions.

5.2.1-12 Hotel operators shall provide hotel guests with access to a free on-demand regional service shuttle connecting to a public regional trolley or public transportation service, and hotel employees who take public transit to work shall receive fully subsidized public transit passes.

5.2.1-13 Electric vehicle (EV) charging stations and parking stalls shall be allocated throughout both hotel parking areas in accordance with minimum CALGreen standards. The charging stations shall be available for use by the general public and provide multi-lingual signage to indicate this availability, shall provide multiple options for form of payment, and shall provide charging connectors and/or adapters to support the broadest charging access for various EVs possible. In addition, onsite bicycle parking shall be provided consistent with the requirements of the Local Coastal Program, including racks and charging stations available to accommodate electric bicycles and scooters.

5.2.1-14 To reduce long-term operation emissions from area sources, the hotel design shall implement energy conservation measures, such as roof-mounted solar panels, energy-efficient and bird/marine environment-safe lighting, fixtures, and appliances.

5.2.1-15 Hotel operations shall minimize plastic consumption, waste, and litter. Coordination of a Marine Debris Reduction Program is required, as is membership or certification via an established program. The Marine Debris Reduction Program shall ensure measures to avoid and divert food waste.

5.2.1-16 The hotels in Planning Area 3 shall directly offer kayak, paddle board, bicycle, and similar recreational rentals at no or discounted costs to guests of the lower cost rooms; alternatively, collaboration with nearby businesses or co-operatives may be allowed.

5.2.1-17 The hotel site shall provide a new designated launch location for hand-carry watercraft open and available to the public at no cost near the intersection of the Pedestrian Promenade and Island Way or at the nearest suitable location; or, alternatively, the hotel shall provide and conspicuously advertise free transport of hotel guests and their hand-carry watercraft to the existing launch site at Baby Beach. Other public access ways and points required by the Local Coastal Program shall be identified in a Public Access Management Plan for Planning Area 3 and provided for in concert with redevelopment of the site. All public access signage shall be provided in multiple languages.

5.2.1-44-~~1018~~ Future facilities providing overnight accommodations will be located in the area designated as Visitor Serving Commercial (Planning Area 3) by the Dana Point Harbor Land Use Plan.

5.2.1-19 The two new hotels shall be sited, designed, and constructed in a manner that does not adversely impact public access and that prevents flood damage and seawater intrusion from sea level rise over the course of their life spans, consistent with the development and sea level rise policies of the Local Coastal Program and the Coastal Act, and as informed by the best available science. Future adaptation measures may be necessary consistent with

any recommendations put forth by the City in the Shoreline Management Plan (or updates thereto) as required per LUP Policy 8.6.3-1 and IP Chapter 3.

5.2.1-20 Community benefits shall be included as part of the replacement of the existing hotel complex. Specific community benefit initiatives shall be included as conditions of approval for the requisite coastal development permit to replace the hotel complex. Any community benefits shall include or expand further on the programs described in LUP Policies 5.2.1-22 (related to public access and recreation) and 5.2.1-23 (related to lower cost overnight accommodations), and shall also enumerate specific benefits to underserved individuals and communities within the County of Orange. The total value of contributions to these programs shall equal or exceed \$110,000 annually in total for the life of the hotel development.

5.2.1-21 Pursuant to LUP Policy 5.2.1-2, the maximum average daily rate of the replacement hotel shall be equal to or less than the existing Marina Inn’s annualized average daily rate for the year 2022 adjusted once annually for inflation using the Consumer Price Index (CPI). The rate of the lower cost rooms used to offset the market rate rooms shall be equal to or less than three-quarters (75 percent) of the peak season (average of July and August) statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons.<sup>3</sup> All lower cost and moderate cost overnight accommodations shall be subject to annual Coastal Commission reporting and auditing requirements, as conditioned in a future local coastal development permit. If any replacement hotel rooms are proposed to be priced equal to or less than the 2022 annualized average daily rate of the existing hotel (adjusted for inflation using CPI) but higher than three-quarters (75 percent) of the peak season statewide average daily room rate, adjusted by ten percent for each additional occupant above two persons, then the proportional difference between the rates, in conjunction with site-specific construction cost estimates for these rooms, shall determine the monetary value of the benefits necessary to offset the higher room rates.<sup>4</sup> The monetary value shall only be used to fund programming as indicated in LUP Policy 5.2.1-23 and shall not be accepted as a simple payment of an in-lieu fee.

5.2.1-22 To complement existing Harbor initiatives for underserved youth,<sup>5</sup> the hotels planned for Planning Area 3 shall participate in programs for underserved youth annually,

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<sup>3</sup> The maximum rate shall be calculated as such:  $([\text{number of occupants in room}] - 2) * 0.1 =$  “occupancy allotment”; therefore,  $(\sum ([75\% \text{ of peak-season statewide ADR}] * (1 + [\text{occupancy allotment}]) * [\text{number of rooms}] / [\text{total number of lower cost rooms}] =$  “maximum rate.”

<sup>4</sup> The rate differential offset shall be calculated as such:  $([\text{Actual ADR of replacement units (no higher than Marina Inn 2022 annualized ADR + CPI)}] - [75\% \text{ of peak-season statewide ADR} + 10\% \text{ increase per occupant above 2 guests}]) / [75\% \text{ of peak-season statewide ADR} + 10\% \text{ increase per occupant above 2 guests}] =$  “markup,” and  $[\text{site-specific construction costs of lower cost rooms}] * [\text{number of required lower cost rooms}] =$  “in-lieu fee”; therefore,  $[\text{markup}] * [\text{in-lieu fee}] =$  “rate differential offset.”

<sup>5</sup> The term “underserved youth” shall be defined as individuals up to the age of 18 years from underserved communities that have been historically excluded from accessing the benefits of coastal opportunities and/or disproportionately impacted by environmental burdens that include, but are not limited to, low-income households; Black, Indigenous, and communities of color; people with disabilities; inland and/or rural communities; youth who attend Title 1 schools (and their caregiver/s); the unhoused; LGBTQIA+; carceral-impacted youth; and, foster and transition age youth.

for the life of the hotel development, by contributing financially to expand and/or improve existing programming for underserved youth in Dana Point Harbor required by Coastal Development Permit (CDP) No. 5-19-0971. The hotels shall also directly participate in additional public access and recreational programs for underserved communities (such as those providing no-cost or low-cost boating and recreational activities within the harbor, sailing education for disabled persons, ocean access education for Title 1 students, exercise for fixed income seniors, indigenous land stewardship, or partnering with a local WHALE TAIL® grant recipient to provide annual community barbecues (food and beverage) at no cost). The hotels shall ensure adequate transportation for attendees of all programs.

5.2.1-23 If required per LUP Policy 5.2.1-21 in lieu of offering lower cost room rates for the replacement lower cost rooms, the hotel(s) shall directly provide or fund lower cost overnight programming at no cost for underserved youth and their families, such as partnering with the Ocean Institute and/or OC Sailing and Events Center to provide a free overnight camping experience located on the coast to underserved youth, expand and upgrade lower cost overnight accommodation facilities at the OC Sailing and Events Center and/or Ocean Institute, provide hospitality internships, or any combination thereof.

## 6.2 Principal and other Permitted Uses

The following principal and other permitted uses in Planning Area 3 are subject to the approval of a Coastal Development Permit as provided in Chapter 11-16, *Discretionary Permits and Procedures*.

a. Lower cost overnight Overnight visitor accommodations must provide a minimum of 136 lower cost hotel rooms, and additional lower cost overnight accommodations ~~or~~ and amenities may shall be provided as required to offset the addition of any new market rate rooms. The second new market rate hotel shall not exceed 130 market rate rooms and shall offset the creation of new market rate rooms by providing a minimum of a quarter (25 percent) of the total number of new market rate rooms as lower cost overnight accommodations. The additional lower cost overnight accommodations may be provided in the market rate hotel (resulting in up to 130 market rate rooms and at least 33 lower cost rooms) or provided in the lower cost replacement hotel (for a total of at least 169 lower cost rooms).

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## 6.5 Development Standards and Requirements

The following standards shall apply except as otherwise established by an approved Coastal Development Permit per Chapter 11-16, *Discretionary Permits and Procedures*.

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p. Replacement of Existing Hotel Units: In the event that demolition of the existing lower cost overnight visitor accommodations (presently called the Marina Inn) ~~are~~ is proposed, all 136 demolished units shall be replaced in the area designated as Visitor Serving Commercial in the Dana Point Harbor Land Use Plan with 136 units that are ~~of equal or~~ lower cost in perpetuity ~~than the existing lower cost units to be demolished~~. A new and separate market rate hotel of up to 130 rooms may be constructed. If the ~~second new~~ market rate hotel ~~does not provide a minimum of 25 percent of new accommodations has no lower cost overnight~~ on site at lower cost, additional lower cost rooms, lower cost overnight visitor accommodations ~~or and no-cost amenities may shall~~ be required to be provided in the new lower cost overnight accommodations hotel or market rate hotel, with the number of new lower cost rooms

**provided equal to a quarter (25 percent) of the total number of new market rate rooms.** In the event that demolition of the existing lower cost overnight accommodations (presently called the Marina Inn) are proposed, all demolished units shall be replaced in the area designated as Visitor Serving Commercial in the Dana Point Harbor Land Use Plan with units that are of equal or lower cost than the existing lower cost units to be demolished. Conversion of any existing units to high cost, replacement of any existing with anything other than lower cost units or construction of any new/additional units that are anything other than lower cost units shall require a Local Coastal Program Amendment to address Coastal Act issues associated with such proposals. **Conversion of any lower cost overnight accommodations, as defined in LUP Policy 5.2.1-21, to anything other than lower cost, replacement of any lower cost overnight accommodations with anything other than lower cost, and construction of any new/additional units that are anything other than the overnight accommodation units heretofore described, shall require a Local Coastal Program Amendment.**

q. Longer Visitor Stays: The design of **some of** the lower cost overnight visitor accommodations hotel may also include connections to adjoining rooms, allowing multiple bedroom suite accommodations. **All lower cost rooms shall include microwaves and refrigerators, guest available communal kitchen outdoor barbecue facilities, and guest available communal, self-service clothes washers and dryers, to encourage longer visitor stays, particularly for families with children. Dormitory or hostel-style accommodations may also be provided in addition to the minimum of 136 lower cost accommodation rooms.**

~~Longer Visitor Stays: The design of any renovated or new hotel in addition to traditional guest accommodations may encourage longer visitor stays, particularly for families with children, by providing up to twenty percent (20%) of the total number of rooms with guest amenities in addition to a bedroom, that includes a living area, dining room, kitchen, clothes washers and dryers. Some hotel rooms may provide accommodations for larger groups by offering connections to adjoining rooms or allowing multiple bedroom suites.~~



DANA POINT HARBOR REVITALIZATION PLAN STATISTICAL TABLE 17-A\*

Land Use Category	Planning Area	Gross Acreage	Estimated Existing Square Footage	Maximum Square Footage <sup>(1)</sup>
Visitor-Serving Commercial <del>Select Service</del> Lower Cost Hotel/Motel	3	9.5	136 rooms	<del>220</del> <b>136 To Be Determined</b>
				<b>rooms</b>
				<b>of market rate</b>
				<b>rooms</b>
- Function / Meeting			2,000	12,000
- Restaurant/ Food Service				<u>4,200</u> 2,750
- Accessory Retail				<u>350</u> 500
- Fitness / Health Center			450	<u>700</u> 4,500
<b><u>Market Rate (High-Cost) Hotel</u></b>				<u>130</u> rooms
- <u>Function / Meeting</u>				<u>8,000</u>
- <u>Restaurant/ Food Service</u>				<u>8,275</u>
- <u>Accessory Retail</u>				<u>600</u>
- <u>Fitness / Health Center</u>				<u>1,700</u>
Boater Service Building 2			3,600	4,000
Boater Service Building 3			3,600	<u>3,000</u> 8,800
Boater Service Building 4			5,000	<u>3,800</u> 7,000
Planning Area 3 Subtotals		9.5	8,600	<u>28,625</u> 31,360 <sup>(3)</sup>

FootnNotes: (1) Maximum Square Footage includes existing buildings to remain  
 (2) May include a Marine Retail Store  
 (3) For hotel, square footage subtotal includes ancillary uses only  
 (4) Includes OC Dana Point Harbor offices on the upper floor  
 (5) Boater Service Buildings in Planning Area 3 may be incorporated within hotel buildings  
**(6) The lower cost hotel rooms that constitute 25% of the number of market rate rooms may be incorporated within the lower cost hotel or the market rate hotel**