

**CITY OF DANA POINT
AGENDA REPORT**

DATE: APRIL 14, 2014

TO: DANA POINT PLANNING COMMISSION

FROM: URSULA LUNA-REYNOSA, DIRECTOR OF COMMUNITY DEVELOPMENT
JOHN TILTON, CITY ARCHITECT/PLANNING MANAGER

SUBJECT: COASTAL DEVELOPMENT PERMIT (CDP09-0011), VARIANCE (V09-0003), CONDITIONAL USE PERMIT (CUP09-0009) AND SITE DEVELOPMENT PERMIT (SDP09-0032) FOR THE DEMOLITION OF EXISTING STRUCTURES AND THE CONSTRUCTION OF A NEW 248,850 SQUARE FOOT HOTEL WITH 258 ROOMS THAT WILL RANGE FROM TWO TO FIVE STORIES IN HEIGHT. THE APPLICATION INCLUDES A VARIANCE TO EXCEED THE MAXIMUM ALLOWABLE BUILDING HEIGHT AND TO DEVIATE FROM REQUIRED BUILDING SETBACKS. A CONDITIONAL USE PERMIT IS BEING REQUESTED TO ALLOW AN ALTERNATIVE TO THE OFF-STREET PARKING REGULATIONS THROUGH A SHARED PARKING AND VALET PROGRAM. A FINAL ENVIRONMENTAL IMPACT REPORT (EIR) HAS BEEN PREPARED TO ADDRESS POTENTIAL ENVIRONMENTAL IMPACTS ASSOCIATED WITH THE PROJECT. THE SUBJECT SITE IS LOCATED AT THE SOUTHWEST CORNER OF DANA POINT HARBOR DRIVE AND PACIFIC COAST HIGHWAY IN THE COASTAL COUPLET COMMERCIAL (C-CPC) AND COASTAL VISITOR COMMERCIAL (C-VC) ZONES OF THE DANA POINT SPECIFIC PLAN.

RECOMMENDATION: That the Planning Commission take one of the following actions:

1. Adopt Resolution No. 14-04-14-XX denying CDP09-0011, Variance V09-0003, CUP09-0009 and SDP0-0032.

2. Adopt both Resolution No. 14-04-14-XX, certifying Final Environmental Impact Report (EIR SCH#2011061041) and Resolution No. 14-04-14-XX, approving CDP09-0011, Variance V09-003, CUP09-0009 and SDP09-0032 for the Proposed Project/ Modified Option B, adopting the "Doheny Hotel Statement of Overriding Considerations and Findings of Fact", and adopting the Mitigation Monitoring and Reporting Program (Chapter 5 of the Final Environmental Impact Report).

**APPLICANT/
OWNER:**

Michael Draz/Beverly Hills Hospitality Group

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REQUEST: A Coastal Development Permit and Site Development Permit for demolition of existing structures and the construction of a 250 room hotel that will range from two to five stories in height. The application includes a Variance to exceed the maximum allowable building height and to deviate from some of the required setbacks, and a Conditional Use Permit to allow an alternative to off-street parking regulations as well as implementation of a valet parking program for the hotel and accessory uses.

LOCATION: 25325 Dana Point Harbor Drive, 34297 and 34293 Pacific Coast Highway (APN# 682-166-08, #682-166-21 and #682-166-22)

NOTICE: Notices were mailed to property owners within 500 feet, occupants within 100 feet of the site and those whose names were added to an interested party list as well as neighboring homeowners associations to the project site. The duly noticed public meeting held at the regular Planning Commission meeting on February 10, 2014 was continued to April 14, 2014.

ENVIRONMENTAL: An Environmental Impact Report (EIR SCH#2011061041) and Statement of Overriding Considerations and Findings of Fact have been prepared in accordance with Article 7 of the California Environmental Quality Act (CEQA).

ISSUES:

1. Does the EIR appropriately identify, mitigate or acknowledge an inability to mitigate the potential environmental impacts of the proposed project as modified?
2. Is the proposal consistent with the County of Orange adopted Dana Point Specific Plan, the Dana Point Local Coastal Program, portions of the City's General Plan and the County of Orange Zoning Code?
3. Does the project satisfy all the findings required pursuant to the County of Orange Zoning Code and the Dana Point Specific Plan for approving a Coastal Development Permit, Site Development Permit, Conditional Use Permit and Variance?
4. Does the shared valet parking program provide a reasonable, accountable and enforceable means for all uses to share parking and will the parking demand be continually met?

BACKGROUND:

The initial application for the Doheny Hotel project was submitted in December of 2009 and was deemed complete one year later in 2010. It was determined that an Environmental Impact Report (EIR) would be necessary to evaluate the environmental impacts associated with the project and in early 2011 the environmental review process commenced. The Proposed Project/ Modified Option B (defined later in this staff report) has changed since the submittal of the initial application and is described in detail later in this staff report. The site is located within the City's coastal zone and is comprised of three contiguous fully developed parcels. Except for a small County of Orange parcel that contains a Dana Point Harbor monument sign, the properties inhabit the corner of Dana Point Harbor Drive and Pacific Coast Highway (PCH), a key intersection for the City.

The parcels are currently developed with an existing Jack-in-the-Box restaurant, a vacant former liquor store (which has been vacant and boarded up for at least the past 10 years) and a 46-room motel (which has been redtagged and is not currently habitable) with associated surface parking lots encompassing approximately 21,134 square feet of building area. The subject site is surrounded by other commercial development to the north, west and east and by Lantern Bay Park to the south.

The Proposed Project is located within the City of Dana Point's coastal zone and Dana Point Specific Plan (DPSP) area which includes the 1986 City of Dana Point Local Coastal Program. Therefore the policies, land use designations, development standards, maps, and diagrams for the site are found within the Dana Point Specific Plan/1986 Local Coastal Program.

Dana Point Specific Plan

The Dana Point Specific Plan is a certified Local Coastal Plan which became effective when adopted by the California Coastal Commission in 1986. Implementation of this Specific Plan ("DPSP") is through the Orange County Zoning Code ("OCZC") as opposed to the Dana Point Zoning Code ("DPZC"). In general, the DPSP provides detailed guidance and policies in connection with five mandated elements and one optional element of the Orange County General Plan that were in effect at the time the Specific Plan was adopted in 1980. These elements include the Land Use Element, the Circulation Element, the Housing Element, Recreation Element, the Scenic Highways Element and the Community Design Element (optional). City Staff has reviewed the proposed project with respect to the DPSP and the OCZC as well as portions of the City of Dana Point General Plan (i.e. Noise Element and Circulation Element) which staff felt was applicable and necessary to include for the overall analysis of this project.

City of Dana Point General Plan Local Coastal Program Components

The City's General Plan states "The certified Land Use Plan (LUP) policies, land use designations, and maps, diagrams, figures, tables and other graphics for the areas of the City of Dana Point's coastal zone, except the uncertified areas covered by the existing certified Dana Point Specific Plan/Local Coastal Program, are contained in the Land Use, Urban Design, and Conservation/Open Space of the City's General Plan." The policies, land use designations, and maps, diagrams, figures, tables and other graphics which apply specifically to the other areas of the City which are covered by the existing Dana Point Specific Plan/1986 Local Coastal Program are contained within the Dana Point Specific Plan/Local Coastal Program. These LUP policies, land use designations, and maps and other graphics contained in the Dana Point Specific Plan/Local Coastal Program remain in effect for local coastal program purposes for those specific geographic purposes. The Certified LUP carries out the requirements of the California Coastal Act by including coastal resources planning and management policies described in Chapter 3 of the California Coastal Act.

Land Use/Zoning

The subject site has two land use designations under the Land Use Element of the 1986 Local Coastal Plan (LCP) for the Dana Point Specific Plan area. The portion of the overall subject site that faces Pacific Coast Highway (PCH), which includes the Jack-in-the-Box and the vacant liquor store, is designated "Community Commercial" (CC). The existing 46-room motel which fronts Dana Point Harbor Drive is designated "Tourist Recreational/Commercial" (TRC). Both hotels and restaurants are allowed within the CC and TRC areas subject to either a Site Development Permit or Conditional Use Permit. Hotels are an encouraged use within TRC areas and are consistent with this land use designation.

Additionally, the Proposed Project site has two zoning designations under the LCP for the Dana Point Specific Plan Area. The portion of the overall site that faces PCH, which includes the Jack-in-the-Box and the vacant liquor store, is zoned "Coastal Couplet Commercial" (C-CPC). The existing Dana Point Harbor Inn, a 46-room motel which fronts Dana Point Harbor Drive, is zoned "Coastal Visitor Commercial" (C-VC). In accordance with the City's certified Local Coastal Plan map, the Proposed Project/ Modified Option B is not located within the appeals jurisdiction of the California Coastal Commission. Retail businesses, restaurants and hotels are principal permitted uses within both the C-CPC and C-VC districts of the Dana Point Specific Plan, but are subject to the provisions of a Coastal Development Permit.

Applicable Development Standards of Two Zoning Districts

As stated above, the property is located within the Dana Point Specific Plan area and has two zoning designations; Coastal Couplet Commercial (C-CPC) and Coastal Visitor Commercial (C-VC). Site development standards for both zones including building height, lot coverage, building setbacks, landscaping, loading, trash and storage, etc. are specified in the Dana Point Specific Plan.

The most important site development standards for the two parcels that are zoned C-CPC (i.e. the existing Jack-in-the-Box fast food restaurant and vacant commercial building) include the following:

Building Height – 35 feet; (10-feet of additional height for mechanical screening is allowed to a maximum of 10% of roof area).

Building Setbacks – 5 feet (front); 5 feet (street side); 0 feet (abutting non-residential districts); 5 feet (rear);

Site/Lot Coverage – No limitation;

Off-street Parking – Per Section 7-9-145 of the Orange County Code, required parking for hotels/motels is 1 parking space for each guest unit, plus additional parking as required for accessory uses. Required parking for restaurants is a minimum of 10 spaces or 1 space for every 100 square feet of gross floor area (including outdoor serving areas) up to 4,000 square feet, plus 1 space for every 80 square feet of gross floor area over 4,000 square feet; alternative provisions to any of the off-street parking regulations may be permitted subject to the approval of a conditional use permit.

Loading – All loading and unloading operations shall be performed on the site, and loading platforms and areas shall be screened from view by a landscape or architectural feature. Loading and unloading shall not impede traffic on Del Prado or Pacific Coast Highway.

Trash and Storage – All storage cartons and trash shall be shielded from view by containment within the building or within an area enclosed by a wall not less than 6 feet in height and, if uncovered, not within 40 feet of any residential area.

Landscaping – Boundary landscaping is required for a minimum depth of five (5) feet along all property lines abutting streets for the area required for street openings and the area within ten (10) feet on either side of street openings. An additional

amount, equal to at least five (5) percent of the total area of the parcel, is required and a minimum of twenty-five (25) percent of such landscaping shall be located in the area devoted to parking.

The most important site development standards for the one parcel that is zoned C-VC (i.e. existing 46-room motel) include the following:

Building Height – 35 feet (10-feet of additional height for mechanical screening is owed to a maximum of 10% of roof area)

Building Setbacks – 20 feet (front); 10 feet (side); 10 feet (rear)

Site/Lot Coverage – No limitation

Off-street Parking – Per Section 7-9-145 of the Orange County Code, required parking for hotels/motels is 1 parking space for each guest unit, plus additional parking as required for accessory uses. Required parking for restaurants is a minimum of 10 spaces or 1 space for every 100 square feet of gross floor area (including outdoor serving areas) up to 4,000 square feet, plus 1 space for every 80 square feet of gross floor area over 4,000 square feet; alternative provisions to any of the off-street parking regulations may be permitted subject to the approval of a conditional use permit.

Loading – All loading and unloading operations shall be performed on site whenever possible.

Trash and Storage – All storage cartons and trash shall be shielded from view by containment within the building or within an area enclosed by a wall not less than 6 feet in height and, if uncovered, not within 40 feet of any residential area.

Landscaping/Screening Minimum – 50% of the front setback area.

Applicable Design Guidelines

The DPSP's Land Use, Scenic Highways and Community Design Elements provide design guidelines for individual areas within the specific plan area. The majority of the design guidelines reference desired improvements and landscaping within public rights of way. The Land Use Element recommends private development to continue with "open space and tourist recreational uses" and, while "New England" village theme is recommended in the Community Design Element for some areas of the plan (now covered by the Town Center Plan), development down coast of the Town Center, is characterized as "a mixture of many

architectural styles of varying ages” and no specific style or theme is mandated. The Scenic Highways Element identifies the intersection of PCH and Del Obispo as the southern gateway to the City and characterizes it as “urban in nature”. Applicable DPSP recommended design guidelines applicable to development are outlined below:

- Architectural Style: The DPSP states that the architectural style survey indicated there is not a one prevalent style within the PCH corridor. No particular architectural style or theme is mandated for development in this area.
- Maintain a two-story height limitation within the PCH corridor.
- Consolidate parking, where appropriate, to eliminate the number of ingress and egress point onto PCH.
- Landscape parking areas to form an attractive commercial environment.
- Clearly mark parking areas with adequate signs and graphics.
- Develop pedestrian access ways from the parking areas to the commercial establishments.

Compliance with DPSP Design Guidelines and Development Standards:

The following is a comparison of the applicable DPSP Design Guidelines to the design of Proposed Project/Modified Option “B”:

- Architectural Style: The DPSP states that the architectural style survey indicated there is not a one prevalent style within the PCH corridor. No particular architectural style or theme is mandated for development in this area.
Design Response: The architectural style is characterized as contemporary.
- Maintain a two-story height limitation within the PCH corridor.
Design Response: 70 feet of the building’s frontage is two-stories in height and, while the remaining 170 feet of frontage is three-stories in height, the development standards allow three stories and, in this case, the third story is setback five feet from the floor below so that, from the sidewalk below, only 2 stories would be perceived.
- Consolidate parking, where appropriate, to eliminate the number of ingress and egress point onto PCH.
Design Response: Parking is consolidated into the development and all existing driveways along its PCH frontage would be eliminated.
- Landscape parking areas to form an attractive commercial environment.

Design Response: No parking areas are visible from streets. Although parking is primarily subterranean, the driveway entry from Harbor Drive is landscaped along its perimeter.

- Clearly mark parking areas with adequate signs and graphics.
Design Response: A Sign Program for the hotel is required for subsequent approval that would include way finding signage for the site.
- Develop pedestrian access ways from the parking areas to the commercial establishments.
Design Response: Minimum 8 foot wide sidewalks are provided adjacent to PCH and Harbor Drive with minimum 5-foot wide pedestrian connections to streets from parking areas.

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The following is a comparison of the applicable DPSP Development Standards to the design of Proposed Project/Modified Option “B”:

Zoning	Coastal Couplet Commercial	Coastal Visitor Commercial	Proposed Project/Modified Option “B”
Building Height	35 feet (+10% at 45ft.)	35 feet (+10% at 45 ft.)	Variance for 29.5 – 60.5 feet (+9% at 68.5 ft.)
Setbacks: Front Side Rear	5 feet (PCH) 5 feet 5 feet	20 feet (DP Harbor) 10 feet 10 feet	10ft. at PCH, 20+ feet at Harbor Dr. Variance for 0 side Variance for 0 rear
Off-Street Parking	Alternative Parking methods allowed w/CUP.	Alternative Parking methods allowed w/ CUP.	Shared/Valet Program CUP
Loading	On-site, screened and not impede traffic	Encouraged to be on-site	35%PCH Loading Zone (Dedication) 65% on-site (off Harbor Dr.)
Trash and Storage	Must be contained within bldg or in an enclosed area with a wall not less than 6 feet in height. If uncovered, can't be within 40 feet of a residential area.	Must be contained within bldg or in an enclosed area with a wall not less than 6 feet in height. If uncovered, can't be within 40 feet of a residential area.	Trash contained within Bldg.
Landscaping	5 feet at street boundaries.	50% of the front setback area.	PCH-cumulative pockets equal 5' DP Harbor Dr-100% of setback

ENVIRONMENTAL ANALYSIS:

Pursuant to the provisions of the California Environmental Quality Act (CEQA), an EIR (SCH No.2011061041) was filed with the State Office of Planning and Research, and was prepared and circulated for public review and comments to consider potential significant effects on the environment anticipated as result of the project.

A public Scoping Meeting was held in June 2011 at the Dana Point Community Center to formally introduce the project to the community and gather initial comments and/or concerns about the overall development. Following this meeting, the public provided both verbal and written comments. Issues raised at the Scoping Meeting included concerns about the need for the project, the project alternatives, height of the hotel/mass/bulk, project

variances, hotel rating, traffic/circulation, noise, light and glare, liquefaction of site soils, groundwater level, hotel design/aesthetics, water use/runoff and landscaping.

Following the Scoping Meeting, a Draft EIR (DEIR) was prepared for the project. The evaluation and subsequent analysis of the project impacts is discussed in Chapters 3 and 4 of the DEIR. The DEIR was completed in June 2013 and a 45-day public review and comment period was held from July 24, 2013 to September 6, 2013. Copies of the DEIR were provided to the Dana Point Planning Commission and City Council and placed at City Hall, the Dana Point Library as well as on the City's website.

At a duly noticed public hearing at the regular Planning Commission meeting of February 10, 2014, staff and the City's environmental consultant provided an overview of the DEIR prepared for the project.

The Lead Project described in detail in the DEIR on pages 2-12 through 2-23, is not the project before the Planning Commission for consideration.

EIR Alternatives:

CEQA states that an EIR must address a "range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project or evaluate the comparative merits of the alternatives". Four project alternatives were identified and analyzed for relative impacts when compared to the proposed project:

No Project Alternative

- Proposed project is not implemented; site remains in its current state

Three-Story Alternative

- Proposed project conforms to the 35' height limit
- Deletion of both fourth and fifth floors
- No variances for building height or setbacks
- 114 total rooms
- 7,087 square foot restaurant
- 12,103 square foot conference center/banquet/meeting area

Four-Story Alternative

- Proposed project would be 50' feet in building height
- Deletion of the fifth floor
- Variance required for building height only
- 188 rooms

- 7,087 square foot restaurant
- 12,103 square foot conference center/banquet/meeting area

Option “B” Alternative

- Proposed project would utilize 0.76 acres of Lantern Bay Park;
- Proposed project would range in stepped heights; from two stories 29.5’ feet, four stories 48.5’ and 5 stories 55.5’ in building height
- Proposed project would include a two to five story hotel
- Variances for building height and front, side and rear building setbacks required
- Expanded entrance/driveway area that would lead to two levels of subterranean parking beneath the hotel with 50 public parking spaces on-site for use by the public
- 273 rooms
- Required parking for use provided entirely on-site
- 15,580 square foot conference center/banquet/meeting area

The project alternative, “Alternative Project Option ‘B’” included in the DEIR, includes more environmental analysis than is typically included for a project alternative. The reason for this additional analysis is that the developer wanted the ability to pursue this alternative if it received favorable feedback over the Lead Project. In addition to informal community meetings conducted by the developer, the City held a noticed special meeting on-site on November 16, 2013 and a study session of the Planning Commission on November 18, 2013 to review the project and provide an opportunity for the public to comment on the project. A duly noticed public hearing for the project was held on December 9, 2013 and continued to February 10, 2014 which provided additional opportunities for public comment. After hearing some of the concerns articulated by the public and Dana Point Planning Commission, the applicant decided to propose some modifications to “Alternative Project Option ‘B’” in an attempt to address some of the concerns. ***This modified option is the project before the Planning Commission for consideration and is hereby referred to as the “Proposed Project/ Modified Option B”.***

Description of Proposed Project/ Modified Option B

The Proposed Project/Modified Option “B” includes the 1.5-acre site for the proposed Lead Project (described in detail in Chapter 2 of the DEIR) and 0.76 acres of Lantern Bay Park, located immediately south of the subject site. The project includes demolition of the existing on-site structures and associated surface parking lots in order to allow for the development of a new hotel. The Proposed Project/ Modified Option “B” would include access to the hotel off of Dana Point Harbor Drive through an expanded entrance/ driveway that would be located on a portion of Lantern Bay Park. The expanded driveway presents a grander

sense of arrival. The driveway would lead to two levels of subterranean parking beneath the hotel, with 50 public parking spaces to be provided onsite, at grade for use by the public. A portion of the 50 public parking spaces (20 spaces) to be provided onsite would be self-parked, with the remaining public parking accessed through the valet service. All other remaining parking areas would be accessed through the valet service. Parking for Proposed Project/Modified Option "B" includes a total of 375 spaces, all of which would be located completely onsite.

The Proposed Project/Modified Option "B" assumes that a 0.76-acre portion of the adjacent City-owned Lantern Bay Park would be used to create an expanded driveway. Site control for this portion of the park would need to be acquired from the City prior to implementation of the project. This aspect of Modified Option "B" would also entail an additional 58,560 cubic yards of excavation.

Under Proposed Project/Modified Option "B" the number of guest rooms would decrease to 250. Twenty-eight rooms would be eliminated from the hotel by eliminating a floor of the portion of the building that runs adjacent to Pacific Coast Highway and turns the corner at Dana Point Harbor Drive and another eight rooms are eliminated by the redesign of floor plans. The elimination of this floor at this portion of the building reduces the building height from 4 stories at 48.5 feet to 3 stories at 38.5 feet. Twenty-eight rooms would be added to the hotel in between the first and second levels through the construction of a new mezzanine. These reductions and additions result in a net decrease of 8 rooms for a total of 250 rooms.

The overall height measurements of the building would be similar to the proposed Lead Project (29.5 feet at its lowest point and 60.5 feet at its highest point not including mechanical equipment screening at 68.5 feet) except that the approximate area of building at the average highest measurement of 60.5 feet has been reduced. In the Lead Project, approximately 50% of the building is measured at 60.5 feet or greater and in Proposed Project/Modified Option "B", the area at that height is reduced to approximately 44%. Similarly, the approximate area of building that was measured at the next highest level, 48.5 feet, has also been reduced. In the Lead Project, approximately 25% of the building is measured at 48.5 feet and in Proposed Project/Modified Option "B", the approximate area at that height is reduced to approximately 6%. There has been a corresponding increase in the area of the building that is lowered to three stories at 38.5 feet or lower. Under the Lead Project, approximately 5% of the building is measured at 38.5 feet or lower and the Proposed/Modified Option "B" area at that height or lower is approximately 50%. The table below, from the FEIR for the project, shows percentage of height changes from the Lead project to Proposed Project/Modified Option "B".

Table 2-1
BUILDING HEIGHT PERCENTAGES

Height (feet)	Percentage of Building at Designated Height	
	Modified Option B	Lead Project
68.5 ¹	9%	9%
60.5	35%	41%
48.5	6%	25%
38.5	50%	25%

Additional changes to Proposed Project/Modified Option “B” include:

- An increase in the setback of the roof terrace “lobby lounge” from Pacific Coast Highway from 14 feet to 30 feet,
- Relocation of the outdoor dining area adjacent to the restaurant eliminating a need for a front yard variance.
- An additional loading dock located at the north-western end of the building (facing Lantern Bay Park) to reduce the volume of delivers received at the Pacific Coast Highway loading zone
- Additional striping on PCH to include a 3-foot bike gore for bicyclists, and
- Provision of 21 additional parking spaces in the entry area designated for limousines and taxi cabs.

With the Proposed Project/Modified Option “B” the guest room count is reduced to 250 rooms, total square footage of enclosed area is reduced to 210,175 square feet, including 15,580 square feet of banquet facilities and 7,464 square feet of restaurant. Modified Option “B” also includes additional landscaping in and around the first floor. The Proposed Project/Modified Option “B” still requires variances for both building height and side and rear yard setbacks and the variance for a front yard setback is no longer required. A copy of the plans for the Proposed Project/Modified Option “B” is attached to this report (Supporting Document 3).

Additional Proposed Project/ Modified Option B Characteristics:

Under a porte-cochère entry, driveway to the hotel leads to a valet and pedestrian entry area. Inside the hotel is a lobby and pre-function area, meeting rooms, a restaurant with outdoor patio dining, a small gift shop, restrooms, storage and loading areas and various administrative/employee functions. The next level, the mezzanine, is open to the lobby

below and contains 28 guest rooms and housekeeping. The next level, the second floor, has 64 guest rooms, a swimming pool and pool deck, a fitness room and a small restaurant and lounge area. The third floor has 73 guest rooms and a garden roof terrace overlooking the corner of PCH and Dana Point Harbor Drive. The fourth floor has 44 guest rooms and a large roof terrace with a lounge, open cocktail bar and shallow pool/water feature. The fifth floor has 41 guest rooms along with a small pre-function lobby and meeting room.

The proposed architecture for the project can be characterized as contemporary. Design elements proposed for the building's façade are mostly horizontal, symmetrical, and uniform. Offset asymmetrical elements located above the entry point give the building variable planes. The asymmetrical elements, including varying wall façade heights and varying dimensions on different planes located at the corner entry reduces the bulk of the project. Additionally, the third floor is terraced back with the placement of a garden roof area on the second floor roof to reduce the overall massing of the structure and provide architectural relief at the corner of PCH/Dana Point Harbor Drive. The third floor on remaining portions of the structure is terraced back 5 feet from the second floor below. Ornamentation on the building's façade consists of rows of split pane windows each containing three mullions and highlighting color ribbon insets adorning the building skin. The roof would be flat with a coping ledge running along the entire roof line that would add variation of plane to the building façade. The ground floor level has 3-5 foot deep insets along the PCH sidewalk for storefront displays and landscaping.

The proposed project will also include aspects such as green roofing, dual flush toilets, motion-activated HVAC, rain sensors, drip-watering, electric car charging stations, and implementation of an energy-monitoring program, with the aim of achieving LEED Silver status (LEED stands for Leadership in Energy and Environmental Design).

The exterior walls of the hotel will have a stone finish from the first floor up to the second floor along PCH, Dana Point Harbor Drive and the main entry/porte-cochere area elevations. A planted "green wall" will be incorporated along the adjacent PCH fast food parking lot elevations and the Lantern Bay Park elevation. Above the stone & green wall finishes, the building will have cementitious smooth and textured plaster finish in three (3) colors, based on a local beach sand color pallet, with decorative details at window & glass door surrounds, landscape planters, coping, and parapet/guardrail cornices. Clear glass guardrails will be installed at all decks and balconies. Window & glass door frames will be bronze anodized with clear glass. For the walkways, drive and deck surfaces, stone pavers will be installed at the entry walkways and decks. Colored concrete pavers will be installed at the porte-cochère and driveway. Landscape planters will be incorporated into all decks.

Ingress to the project site would be located on Dana Point Harbor Drive. Other than for

limited loading and unloading functions not related to guests, there will be no access from Pacific Coast Highway. From Dana Point Harbor Drive, hotel patrons would enter a landscaped “porte-cochère”, which would serve the dual purpose of allowing passenger drop-off and access to parking located below the building. The project would provide 375 parking stalls that would be located at grade and in a subterranean level parking garage directly beneath the hotel. Parking of vehicles would be done through a valet parking attendant, and parking stalls would be accessed using car lifts.

EIR Conclusions:

A Mitigation Monitoring and Reporting Program (MMRP) is provided on pages 5-1 through 5-10 of the Final EIR (FEIR) in conformance with Section 15097 of the CEQA Guidelines. A MMRP is required whenever approval of a project relies upon a Mitigated Negative Declaration (MND) or an EIR. The MMRP ensures implementation of the measures being imposed to mitigate or avoid the significant adverse environmental impacts identified through the use of monitoring and reporting.

Section 15091 of the CEQA Guidelines require certain findings to be made prior to a public agency approving a project for which an EIR has been certified that identifies one or more significant environmental effects that remain after mitigation measures have been applied. The written finding(s) must be made for each of those remaining significant effects accompanied by a brief explanation of the rationale for each finding.

Further, pursuant to Section 15093 of the CEQA Guidelines, a public agency that approves a project which will result in the occurrence of significant effects which are identified in the FEIR but are not avoided or substantially lessened, must state in writing the specific reasons to support its action. This written statement is referred to as a Statement of Overriding Considerations (SOC). The decision-making body is required to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks. If the specific economic, legal, social, technological, or other benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable”.

The DEIR concluded that there are two categories with unavoidable and potentially significant impacts that cannot be mitigated – Aesthetics and Land Use. The mitigation measures identified in the MMRP and/or project design features will mitigate the other categories that were identified with potentially significant impacts.

While the Proposed Project/ Modified Option B does lessen the impacts relative to aesthetics it is a subjective, and therefore discretionary, determination whether they have been ‘substantially’ lessened. The impact relative to aesthetics that was identified in the

DEIR that could not be mitigated to a level of 'less than significant' is found on page 3.1-28:

Impact 3.1-2: The proposed project (Lead Project) would result in a potentially significant impact on the existing visual character or quality of the site and the surrounding area.

The DEIR concludes the overall size and massing of the Lead Project (and Alternative 4 – Option “B” Alternative) results in a significant and unavoidable impact. The redesign of the Proposed Project/ Modified Option B, significantly reduces the height, mass and scale of the portion of the building that sits adjacent to PCH and Dana Point Harbor Drive in an attempt to preserve the goals of the Dana Point Specific Plan, along PCH, relative to the existing visual character of the site and surrounding area. While the Proposed Project/ Modified Option B has reduced the area of the building that are 4 and 5 stories in height, those areas still exist and do not conform to the development standards of the district. While the Proposed Project/ Modified Option B does lessen the impacts relative to aesthetics, the impacts have not been lessened to a level of less than significant; therefore, this impact remains significant and unavoidable and requires a SOC.

The other category that the DEIR concluded to have unavoidable and potentially significant impacts that cannot be mitigated is Land Use. The impacts relative to land use can be found on page 3.9-10 and 3.9-11 of the DEIR:

Impact 3.9-1: The proposed project conflicts with the Dana Point Specific Plan, which currently allows for a maximum height of 35 feet in the “Coastal Couplet Commercial” zone and “Coastal Visitor Commercial” zone.

Impact 3.9-2: The proposed project conflicts with the Dana Point Specific Plan, which currently requires a minimum building setback of 10 feet from the rear, 10 feet from either side, and 20 feet in the front of any exterior property line in the “Coastal Visitor Commercial” zone.

Essentially, the DEIR concludes that because variances are needed for building height and setbacks that the project is inconsistent with the underlying land use regulations and therefore results in a significant and unavoidable impact. The Proposed Project/ Modified Option B does lessen the number of setback variances that are necessary under the Lead Project (and Alternative 4 – Option “B” Alternative). Further, the Proposed Project/ Modified Option B greatly reduces the height variance requested along PCH as well as reduces the area of the building that necessitates height variances at the 4 and 5 story portions of the building. These changes lessen the impacts associated to land use. However, the project still does require variances from the development standards and therefore the impact remains significant and unavoidable and requires a SOC.

To approve the proposed project, the Planning Commission must adopt the “Doheny Hotel Statement of Overriding Considerations and Findings of Fact” (Exhibit A of Action Document B). Chapter 4 of this document contains a proposed SOC that details certain economic and social benefits of the project that could be considered by the Planning Commission to outweigh the environmental risks associated with the Proposed Project/ Modified Option B. Further, the project incorporates a number of environmentally friendly attributes with the goal of being LEED Silver certified which benefit the environment in ways not analyzed under CEQA.

The Proposed Project/ Modified Option B has been designed to reduce environmental impacts from the Lead Project or Alternative 4 – Option “B” Alternative by reducing the number of rooms, reducing the number of non-compliant setbacks, reducing the height, bulk and mass of the building, and providing all parking onsite. Therefore, the Proposed Project/ Modified Option B would not result in any new significant impacts, any substantial increase in the severity of any previously-identified significant impacts, any new, feasible alternatives or mitigation measures that would otherwise trigger recirculation of the FEIR under CEQA Guideline section 15088.5. Instead, the modifications to Option “B” would lessen environmental risks and significantly reduced adverse impacts overall as compared with the original Lead Project and Alternative 4 – Option “B” Alternative. While the Proposed Project/ Modified Option B was not included in the DEIR, because it does not introduce any new significant impacts or increase the severity of any previously-identified significant impacts it can be referenced in the FEIR without requiring recirculation of the DEIR. Several published California cases, as well as the recent unpublished case of *City of Petaluma v. County of Sonoma*, (February 28, 2014; Docket No. A134559), attached as Supporting Document 4, support the conclusion that CEQA does not require that the EIR be recirculated prior to certification.

REQUIRED PROJECT ENTITLEMENTS:

The proposed project would require four (4) entitlements, including a Coastal Development Permit for development located within the City’s coastal zone, Variances for building height and setbacks, a Conditional Use Permit for shared valet parking program and a Site Development Permit for the restaurant and overall hotel project. The following is a more detailed discussion of each discretionary permit that is needed to approve the project.

Coastal Development Permit

A Coastal Development Permit (CDP) is a discretionary request for review of development

plans for a proposed use, structure or activity located within the City's Coastal Zone as established by the California Coastal Act and defined in the City's Local Coastal Program. The Dana Point Specific Plan (DPSP) lists restaurants as a "principal permitted use" and hotels/motels as "other permitted uses" in the C-CPC zone, both of which require a Coastal Development Permit (CDP). Hotels and restaurants are listed as "principal permitted uses" in the C-VC zone, which also require a Coastal Development permit. Applications for a CDP in both zones within the DPSP must demonstrate their respective compliance with the site development standards (i.e. height, setbacks, parking, landscaping, etc.) as well as the provisions contained within the Coastal Development (CD) District regulations. The CD District is essentially an overlay district that is combined with any base district and includes the procedures and regulations necessary to implement the provisions of the Local Coastal Program. The proposed project has been evaluated in light of these requirements and while it adheres to the CD District regulations, it does not adhere to the site development standards contained within the DPSP. Variances for building height and some building setbacks are being requested by the applicant.

The CD District regulations within the DPSP state the required findings for a Coastal Development Permit. These findings are listed below for reference:

1. **Local Coastal Program.** That the development project proposed by the application conforms to the Certified Local Coastal Program.
2. **Zoning or District Regulations.** That the application is consistent with the purpose and intent as well as the other provisions of the Orange County Zoning Code or district regulations of the Specific Plan applicable to the property.
3. **California Coastal Act.** That the project conforms to the public access and public recreations policies of the California Coastal Act.
4. **Variance Applications.** In addition to the findings required for a variance by the applicable regulations of this Specific Plan, the following finding shall also be made: "Approval of the application will result in no modification to the requirements of the Certified Land Use Plan for Dana Point."

Site Development Permit

As defined in Section 7-9-150 (d) of the OCZC, the purpose of a site development permit is to provide for administrative review of detailed development plans for a proposed use. If the Director of Community Development (Director) determines that the public interest would be better served by a public hearing before the Planning Commission, then the site

development permit shall be processed as a public hearing. Due to the scope and scale of the proposed project, the Director determined that this project would be processed subject to the review and approval of the Planning Commission.

In accordance with Section 7-9-87 of the OCZC, a Site Development Permit is required for a restaurant in the "Community Commercial" (CC) District. Restaurants are classified as a principal use subject to a Site Development Permit within this district. The DPSP establishes the minimum site development standards for development in the C-CPC and C-VC districts.

The restaurant use will occupy 7,464 square feet of the enclosed building area for the overall hotel project. Parking for the restaurant component was analyzed in a ULI Shared Parking Study prepared by RK Engineering on behalf of the applicant. As part of the restaurant and conference facility operational plan, hotel management will prioritize the restaurant use for its hotel guests first. A key part of the hotel, restaurant and banquet facility management plan is to inform guests upon check-in that a reservation is required prior to dine in the restaurant. Hotel guests will be a priority over outside customers. When anticipated occupancy of the hotel is low, the restaurant will take outside reservations from non-guests not staying in the hotel. The operational characteristics of the restaurant use will be part of the overall hotel operation and are not expected to conflict with other aspects of the hotel or surroundings.

The proposed project exceeds the 5-foot minimum standard for front setback along Pacific Coast Highway. The City is requiring that 10 feet across the front of the subject property fronting Pacific Coast Highway be dedicated for street purposes, similar to other, newer developments up and down the same stretch of PCH. The design then proposes an additional ten (10) foot setback from the new property line, 5 feet greater than required, in order to accommodate a 8-foot wide sidewalk for this area along Pacific Coast Highway. Within the dedication of the applicant's property and the additional setback, the area will be able to accommodate an additional new right hand turn lane, a striped bicycle "gore", a loading zone for the hotel and a wider sidewalk with street tree pockets as a part of the proposed project.

With the exception of the building height and side and rear setbacks addressed as part of this application, the project conforms to the applicable development standards in the Zoning Code. Additionally, the site is suitable for the proposed development in that a hotel is an allowed use within both the C-VC and C-CPC zones of the DPSP.

Conditional Use Permit

In accordance with the Section 7-9-145.7 of the OCZC, a Conditional Use Permit is required

for alternatives to off-street parking regulations. The Conditional Use Permit may be approved if the Planning Commission finds that (1) the applicable off street requirements are “excessive or inappropriate due to the nature of the specific use involved or because special circumstances applicable to the property” and (2) the proposed off street parking facilities comply with the intent of the OCZC off street parking regulations.

Here, the applicant is proposing 375 parking spaces on-site which will be accommodated through a valet service using a stacked, car lift system. This includes 50 parking spaces allocated to the general public. Based upon the parking requirements stated in the OCZC, the overall project, including the hotel, restaurant and accessory uses, requires a total of 498 parking spaces.

The County of Orange parking standards specify parking rates for independent uses and do not take into account mixed-use developments. The proposed project contains complimentary uses and as a result, a ULI shared parking analysis was prepared to determine the overall adequacy of the proposed parking demand for the project. The ULI Shared Parking Study, prepared by RK Engineering and submitted by the applicant summarizes the projected parking demand for all uses at the hotel as well as utilizes the application of the Urban Land Institute (ULI) *Shared Parking* methodology.

The analysis contained in the parking demand study indicates that the uses on the site (conference center/banquet/meeting space, guestrooms and restaurant space) share parking demand, based on the time differing nature that each use creates peak demand, and on the duplication of parking demand created by guest use of other on-site facilities, which does not create additional parking demand. Per industry standards, the average occupancy rate per room is approximately 1.7 guests. For 250 rooms, the development will have 438 guests at the peak time on the weekends. For the proposed 7,464 square foot restaurant, the maximum capacity is approximately 150 persons. Based upon the operational plan, the ULI Shared Parking Analysis assumes that 75% of restaurant visitors will be hotel guests and 25% of the restaurant visitors will not be staying at the hotel. The ULI methodology also separated visitors versus employee parking (50 spaces at peak) demand for each use.

Based upon the shared parking analysis for the proposed uses, the expected parking demand can be accommodated by the proposed parking configuration and implementation of a parking management plan that utilizes a valet parking service for the site. It should be noted that the Marriott, Double Tree, Ritz Carlton and the St. Regis were all granted Use Permits for shared parking programs. Conditions of approval regarding the maintenance of the shared parking program for the hotel are included in the draft resolution approving the project (Action Document “B”). One important condition of approval included is the condition that all employees of the hotel and accessory uses park

their vehicles on site so as to not displace any off-site public parking.

Variances

A variance is a zoning exception that a city may grant to a proposed project that otherwise would not be allowed under the applicable zoning ordinance. Variances sanction deviations from regulations pertaining to physical standards such as lot sizes, floor area ratios, height limitations and other such requirements. The requirements for variances with in the City of Dana Point for the subject site are governed by: 1) Government Code § 65906 and 2) Orange County Zoning Code § 7-9-150.3(e).

State Law Requirements for Variances

California Government Code Section 65906 establishes the statutory authority for the granting of variances. Section 65906 states:

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.

Orange County Zoning Code Requirements for Variances

The Orange County Zoning Code's requirements for variances are in Section 7-9150.3(e) and states as follows:

(e) Findings.

(1) For all discretionary permits. The following findings shall be made by the approving authority prior to the approval of any discretionary permit:

- a. General Plan. The use or project proposed is consistent with the General Plan.
 - b. Zoning Code. The use, activity or improvement(s) proposed is consistent with the provisions of the Zoning Code.
 - c. CEQA. The approval of the permit application is in compliance with the requirements of the California Environmental Quality Act.
 - d. Compatibility. The location, size, design and operating characteristics of the proposed use will not create conditions or situations that may be incompatible with other permitted uses in the vicinity.
 - e. General Welfare. The approval of the permit application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
 - f. Public Facilities. The approval of the permit application is in compliance with Codified Ordinances Section 7-9-711.
- (2) For variance applications. In addition to the findings required by paragraph (1) of this subsection, the following findings shall be made by the approving authority prior to the approval of any variance application:
- a. Special circumstances. There are special circumstances applicable to the subject building site which, when applicable zoning regulation are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations. (The special circumstances shall be specified in the adopted finding.)
 - b. No special privileges. Approval of the application will not constitute a grant of special privileges which are inconsistent with the imitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with. (OCZC, § 7-9-150.3(e).)

The design of the Proposed Project/ Modified Option "B" requires a variance from the maximum building height standard as well as from the standards for side and rear yard setbacks.

Building Height Variance:

The subject site currently sits at the lowest elevation along this particular stretch of Pacific Coast Highway. While the subject site is relatively flat, there are slight variations to the finished grade elevations at various points throughout the property. For example, at the corner of Del Obispo and PCH, there is a finished grade of 19.50' above Mean Sea Level, while the proposed driveway entrance off of Dana Point Harbor Drive has a slightly lower finished grade of 16.50' above Mean Sea Level. At the northwest corner of the site, the finished grade varies from 20.0 feet to 32.0 feet above Mean Sea Level. As a result of

the range of elevations, the proposed hotel structure will have a range of building heights that reflects the finished grades surrounding the proposed hotel.

Because the height of the proposed hotel would range from two stories and 29.5 feet at the corner of PCH and Dana Point Harbor Drive, to 5 stories and 60.5 feet at the back of the five story wing that faces Lantern Bay Park, a variance from the Dana Point Specific Plan maximum building height standard of 35 feet is required. Mechanical screening on the roof, which occupies less than 10% of the roof, adds another 8 feet.

Side and Rear Yard Variances:

The project, as designed, requires variances from the DPSP C-VC Zone's minimum 10-foot setback requirement for side and rear yards. The proposed side yard conditions occur along the north and south property lines of the C-VC zoned parcel that currently supports the existing motel. The new hotel is proposed to have zero setbacks along these two side yards. The rear yard condition occurs on the most westerly facing property line adjacent to McDonald's fast food restaurant. In this case, while the building wall would conform to the 10 foot setback requirement, an exit stairway for the hotel encroaches into the 10 foot setback.

Details relative to variance findings specific to the Proposed Project/ Modified Option B are discussed in more detail later in this staff report. The following excerpt from Government Code Section 65906 requires an analysis of comparable hotels within the same vicinity and zone:

“the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.”

Comparable Hotels Within the Same Vicinity and Zone:

There are two other hotels that are located in the same vicinity and zone as the Doheny Hotel – the Best Western Plus and the Laguna Cliffs Marriott. A brief summary of each hotel is listed below for reference and background information:

(1) Laguna Cliffs Marriott Hotel:

The Marriott hotel site is comprised of a total of 11.61 acres and is developed with an existing 259,126 square foot, five story hotel/resort that includes a three-level parking structure and associated tennis courts. The site is located on a hill overlooking the Dana Point Harbor with public access provided from Lantern Bay Park. The hotel/resort includes 376 guestrooms, a restaurant, a bar, banquet and conference facilities, two tennis courts, two outdoor swimming pools, and outdoor function areas. The approval for the construction

of the hotel was obtained from the County of Orange in 1984 and the construction of the hotel was completed in 1987. The original approval, Use Permit CUP84-11P and Site Plan 84-9P, permitted a 49 foot six (6) inch high structure that exceeded the County Code height limit of 35 feet. In addition, in 2002, the Planning Commission approved a height variance to allow additional square footage to correspond with the pre-existing building height. Under the City's current standards, the overall building height is approximately 55 feet. The Marriott has also been granted a Conditional Use Permit for its shared parking program.

(2) Best Western Plus (formally Holiday Inn Express):

The Best Western Plus Hotel is located across the street and slightly north from the subject site. It is the closest existing hotel to the subject property. This hotel was approved by the County of Orange in 1985 and consists of 3-4 stories and is located on a steeply sloping lot. The hotel building sits at the front property line without the required front setback. The original staff report states that the hotel complies with the 35 foot height limit. However, the height of this hotel ranges from approximately 35-45 feet according to the measurement of building height per the OCZC and, because there the hotel and its garage level sits above an approximately 10 foot high retaining wall the height of the hotel measured from the sidewalk level towards the down coast is approximately 55'-60' above the sidewalk along PCH.

In addition, to provide further context, the following is a brief description of the entitlements and statistics of the other hotels within the City (i.e., within the same vicinity) that exceed a height of 35 feet:

(3) Ritz Carlton Hotel:

The Ritz Carlton was developed under the permits from both the County of Orange and the Coastal Commission. Since the City's incorporation, new height regulations have been adopted, rendering the existing structure nonconforming to building height. The existing structure measures approximately 46 feet from the lowest point of the structure at the loading dock area to the structure's highest peak at an elevation of 185' (NAVD 88). Other wings of the hotel are approximately 42 feet in height. This peak occurs in several areas of the existing structure including the entry porte-cochere, the central core, and all four wings of the hotel's main structure. An extensive addition to the hotel was approved by the City in 2002 which included a height variance to allow the additional square footage to correspond with the pre-existing building height. In addition, Ritz Carlton has also been granted a Conditional Use Permit for its shared parking program.

(4) Doubletree Hotel:

The Doubletree Guest Suites hotel was originally approved by the County of Orange in 1986. The Coastal Development Permit CD86-10Z, Site Development Permit SDP86-18Z and Variance VA86-09Z for the construction of 156 room hotel and restaurant were

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approved on the subject site on April 17, 1986 by the County of Orange. The Variance was granted for encroachment into the rear yard setback and to exceed the height limit. The total height of the structure was approved at 39'-6". The California Coastal Commission gave its approval to the same project in August, 1986 by approving Coastal Development Permit No. 5-86-362. A separate approval from the Coastal Commission was required because the subject site was located in the Capistrano Beach Specific Plan segment of the Local Coastal Program and that segment was conditionally certified at the time of project approval. The Doubletree has also been granted a Conditional Use Permit for its shared parking program.

(5) St. Regis:

The Monarch Beach Resort Specific Plan was adopted in February 1992, and all of the entitlements were granted shortly thereafter. On May 5, 1992, the City Council approved development of the Hotel. The approvals provided for a 400 key five-star resort and spa, including a restaurant, conference facilities and hotel retail uses with 835 parking spaces. The St. Regis Hotel was approved with five (5) stories above grade and several stories below grade (i.e. parking and meeting rooms, etc.) with a height of 66-78 feet from final grade but no higher than 30 feet above Niguel Road as measured to the mid-point of a sloping roof and the top of a 'flat' roof. The St. Regis has also been granted a Conditional Use Permit for its shared parking program.

The following table shows a side-by-side comparison of the above-identified properties along with the Proposed Project/ Modified Option B:

Property	Area	Room Count	Density	Parking Spaces	Max. Height	Variance Required	CUP for Parking
Doheny Hotel (proposed)	2.26 acres	250	111 rooms/Acre	375	60.5	Yes	Yes
Laguna Cliffs Marriott	11.61 acres	376	33 rooms/Acre	602	55'	Yes	Yes
Best Western	1 acre	84	84 rooms/Acre		45'	Yes	No
Ritz Carlton	17.5 acres	420	24 rooms/acre	847	46'	Yes	Yes
Doubletree	1.53 acres	188	123 rooms/Acre	294	45'	Yes	Yes
St. Regis	14 acres	400	29 rooms/acre	835	78'	No	Yes

PROPOSED CONDITIONS OF APPROVAL

While staff is neither advocating for approval or denial of the Proposed Project/ Modified Option B, the purpose of this staff report is to provide the Planning Commission with sufficient detail to assist the decision making process of this subjective exercise that requires a discretionary decision. Many of the concerns identified by both the Planning Commission and the public are items that would be addressed through Conditions of Approval. A comprehensive list of proposed Conditions are included in draft resolution (Action Document B) approving the project. The following non-exclusive list of proposed Conditions are specific to the Proposed Project/Modified Option B that address concerns that have been raised.

1. The Mitigation Monitoring and Reporting Program (MMRP) of the FEIR for the project shall be included in the conditions of approval by reference. Where there is a conflict between these conditions and the MMRP, the more restrictive shall apply as determined by the Director of Community Development.
2. All approvals are contingent upon the applicant obtaining site control of an approximate 0.76 acre portion of Lantern Bay Park from the City through an agreement.
3. Final design of the hotel's exterior materials, colors and design details shall be submitted for review and approval by the Planning Commission at a noticed public hearing. Approval of a detailed final design plan shall be obtained prior to issuance of any permits.
4. An Exterior Lighting Plan for all proposed improvements shall be submitted to the City for review and approval by the Dana Point Planning Commission as part of a notice public hearing prior to issuance of grading or building permits. The lighting plan shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The Lighting Plan shall include a photometric study that demonstrates that all exterior lighting has been designed and located so that all direct rays are confined to the property. All lighting shall be designed to accommodate the possibility of any required adjustments to the lighting to mitigate unforeseen impacts to properties and public rights-of-ways surrounding the subject property.
5. A construction staging plan shall be submitted to the Director of Community Development prior to the issuance of any permit, and shall include a brief description of the project, the overall duration of the various construction stages including approximate dates, noise abatement measures that will be

taken, and the name and phone number of the construction site supervisor and/or his designee to report any issues or concerns.

6. Prior to the issuance of the first building permit, a final noise study shall be submitted demonstrating that interior noise levels of the proposed hotel operations and guests will not exceed 55 dBA during the day and 45 dBA CNEL from sundown to sunrise to the satisfaction of the Director of Community Development.
7. Employees of the hotel and the other accessory uses shall utilize on-site parking, at no charge to the employee. Employees of the hotel and other accessory uses shall not use off-site parking during work shift hours. The operator of the hotel and restaurant shall develop a parking implementation plan for review and approval by the Director of Community Development for distribution to employees.
8. Storage of any materials/items other than vehicles shall not be permitted in the parking areas at any time.
9. Stacked parking stalls shall only be allowed during peak periods in valet parking areas only.
10. Fifty (50) on-site parking spaces shall be allocated and clearly marked and signed for public use only and may only be valet parked when lot is full.
11. All green walls and green roofs shall be maintained in a disease, weed free condition at all times and replacement plants supplied immediately as needed. Maintenance easements from adjoining properties, as necessary for the maintenance of exterior landscaped walls, shall be obtained prior to issuance of any construction permits.
12. The retaining wall along the south side abutting Lantern Bay Park shall be planted and irrigated. The applicant shall submit a final landscape and irrigation plan for review and approval by the Parks Department and Community Development Department. The plan shall be prepared by a State licensed landscape architect and shall include all proposed and existing plant materials (location, type, size, and quantity), an irrigation plan, note wall/fence locations, a grading plan, an approved site plan and a copy of the entitlement conditions of approval. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code, the preliminary plan approved by the Planning Commission and further, recognize the principles of drought

tolerant landscaping.

13. Sixty-five (65) percent of all deliveries to the hotel shall be received from the Dana Point Harbor Drive entrance south entrance of the hotel. The remaining thirty-five (35) percent of deliveries may occur at the Pacific Coast Highway loading zone along the north side of the building from box trucks measuring no more than 48-feet in length. The hotel and restaurants shall only accept deliveries to the property between the hours of 7 AM and 8 PM Monday through Friday, and on the weekends (Saturday and Sunday) outside of peak traffic hours between the hours of 7 AM and 10 AM and 2 PM and 8 PM. The applicant shall ensure sixty five percent (65%) of all deliveries shall be received on site from Dana Point Harbor Drive in the planned project entrance. The applicant shall only use box trucks (no more than 46 feet in length) for all deliveries, and no more than two trucks shall be delivering materials and supplies at any one time.
14. The public sidewalk in the vicinity of the loading and trash pickup area shall be power washed daily.
15. A special event permit shall be required for any temporary use as per section 9.39.070 of the Dana Point Municipal Code. A special event is a temporary use which requires special consideration due to an increase in traffic, parking, noise, light and glare, vibration, odor, visual impact, or other affects incidental to the operation of a temporary use and the effects that such uses may have on the health, safety and welfare of the neighborhood or the community as a whole. In granting a special event permit, the Director of Community Development may require certain safeguards and establish certain conditions of approval to protect the health, safety and general welfare of the community.
16. All exterior glass shall be non-glare.
17. On or before one year after occupancy of the hotel, the operator shall provide an update to the Director of Community Development that chronicles the implementation of the parking plan as it relates to the peak parking demands identified in the shared parking analysis. Said update shall be based on the parking demand analysis approved as part of the application. Subsequent updates shall be provided annually, at the Director's discretion, to the Community Development Department. Should the annual reviews demonstrate that the parking management plan provided as part of this project is insufficient to accommodate the parking demand at the resort/hotel, the plan shall be

amended to limit the hours of operation for the different uses on site or additional/alternative facilities shall be provided.

18. The use of both roof terraces is limited to the following:
- a. No live entertainment without either a Special Event Permit or a Major Conditional Use Permit;
 - b. Noise at the property line shall be limited to 80db during the following hours:
 - i. Friday, Saturday 10am -10pm
 - ii. Sunday 10am - 9pm
 - iii. Monday – Thursday 10am – 9pm
 - c. Noise at the property line shall be limited to 45db during the following hours:
 - i. Friday, Saturday 10pm -10am
 - ii. Sunday 9pm – 10am
 - iii. Monday – Thursday 9pm – 10am
 - d. The specific db thresholds may be modified as a result of the required Noise Study.
 - e. A certified noise monitor shall be placed onsite at all times to ensure compliance with the required noise level limitations.
 - f. After sunset, only minimal, accent lighting is allowed. The photometric specifications will be included as part of the required Exterior Lighting Plan.
19. The City reserves the right to reconsider this permit at any time if it finds it necessary to re-evaluate impacts of the use on the surrounding community and to ensure the use is operating within the conditions of the permit as well as to identify other conditions which may be required to address potential issues.

REQUIRED FINDINGS FOR DISCRETIONARY PERMITS

As previously noted, the subject property is located within the Dana Point Specific Plan (DPSP) area, which is implemented through the Orange County Zoning Code (OCZC), as opposed to the Dana Point Zoning Code (DPZC). Other than the findings for a Coastal Development Permit, which are stated within in the DPSP, the required findings for a Site Development Permit, Conditional Use Permit and Variance are stated in the OCZC.

Section 7-9-150.3 of the OCZC entitled *Processing Procedures* states that for all discretionary permits, there are five (5) established findings required to approve an

application. Section 7-9-150.3 (e)(1) of the OCZC specifically lists these established findings as follows:

1. **General Plan.** The use or project proposed is consistent with the Orange County General Plan;
2. **Zoning Code.** The use, activity or improvement(s) proposed by the application is consistent with the Zoning Code;
3. **CEQA.** The approval of the permit application is in compliance with the California Environmental Quality Act (CEQA);
4. **Compatibility.** The location, size, design and operating characteristics of the proposed use will not create significant noise, traffic, or other conditions that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity;
5. **General Welfare.** The application will not result in conditions or circumstances contrary to the public health and safety and general welfare.

In order to approve a Variance, the Planning Commission must make the same established findings identified above for the Site Development and Conditional Use Permits as well as two additional findings. For the Variance application, the Planning Commission must find:

1. **Special Circumstances.** There are special circumstances applicable to the subject building site, which when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations. (The special circumstances shall be specified in the adopted finding.)
2. **No special privileges.** Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with.

Again, staff is neither advocating for or against the Proposed Project/ Modified Option B. However, should the Planning Commission desire to approve the Proposed Project/ Modified Option B, staff offers for the Commission's consideration the following bases that could be included in the Findings for the discretionary permits and that could justify the grant of the Variances:

1. General Plan. The use or project proposed is consistent with the General Plan;

Basis for Finding: *The proposed uses are principally permitted and, other than for building height and setbacks, the development conforms to the development regulations and development guidelines of the Dana Point Specific Plan while offering a variety of commercial uses that serves the needs of tourists and other visitors to the coast.*

2. Zoning Code. The use, activity or improvement(s) proposed by the application is consistent with the Zoning Code;

Basis for Finding: *With the exception of the building's height and setbacks addressed as part of this application, the project conforms to the applicable development standards in the Zoning Code. Additionally, the OCZC provides for exceptions (variances) to the Zoning Code when specific findings are made. Additionally, the site is suitable for the proposed development in that hotels and restaurants are permitted uses within both the C-VC and C-CPC zones of the DPSP.*

3. CEQA. The approval of the permit application is in compliance with the California Environmental Quality Act (CEQA);

Basis for Finding: *in that an EIR was prepared and circulated for public review and comments to consider potential significant effects on the environment anticipated as result of the project.*

4. Compatibility. The location, size, design and operating characteristics of the proposed use will not create significant noise, traffic, or other conditions that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity;

Basis for Finding: *The EIR concluded that there are two categories with unavoidable and potentially significant impacts that cannot be mitigated – Aesthetics and Land Use. The environmental risks associated with these concerns have been greatly lessened through the design of the Proposed Project/ Modified Option B. Elements of the project relative to noise, traffic, and other objectionable, detrimental or incompatible concerns have been addressed either through mitigation measures contained in the EIR or through Conditions of Approval. The environmental impacts that cannot be mitigated, relative to Aesthetics and Land Use, is addressed through the adoption of a Statement of Overriding Considerations.*

5. General Welfare. The application will not result in conditions or circumstances contrary to the public health and safety and general welfare;

Basis for Finding: *The stated intent and purpose of the subject zoning districts is “to supply the needs of tourists and other visitors to the coast while preserving unique natural features of the environment” and “to offer a wide variety of commercial uses”.*

The project also includes variances from the height and setback standards established in the DPSP thereby requiring that the following findings be made in support of the variances:

7. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.

Basis for Finding: *As compared to other properties in the same vicinity and zone, the subject property has a unique configuration with a long and narrow “wing” that is a full floor level lower than the neighboring property to the west. This condition, combined with minimum required side and rear setbacks, creates a very narrow shape of developable land thereby justifying a variance from minimum building setbacks in this area of the site. Furthermore, the subject property is also unique because it is subject to two different zoning designations. In addition, the overall shape of the site, made up from three separate parcels, is unique compared to others, is at the lowest grade of Pacific Coast Hwy and is flanked by steep parkland hillsides to the south. These conditions, combined with a required ten foot dedication for arterial highway (PCH) widening, no allowable access off PCH and minimum PCH and Harbor Drive setbacks, constrain the ability to develop the site horizontally as opposed to vertically, thereby justifying a variance for building height.*

8. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with.

Basis for Finding: *Other hotels in the same vicinity have been allowed to depart from height limitations when developing and expanding. The Laguna Cliffs Marriott, located in the same vicinity and zone, exceeds the applicable 35-foot height limit by at least 20-feet and was granted a variance for height. The Best Western Hotel, in the same vicinity and zone, and immediately adjacent to Doheny Hotel across Pacific Coast Highway, was subject to a 35-foot height limit and, although not granted a variance, is up to 45-feet high as measured by the applicable code provisions and approximately 55-60 feet high if measured from the sidewalk along Pacific Coast Highway. In the same vicinity, the Doubletree Hotel at 34402 Pacific Coast Highway*

was granted a variance to exceed a 35-foot height limit and encroach into that property's rear-yard setback. The Ritz Carlton also exceeds 35-feet in height and was recently granted a height-variance as part of an expansion approved by the City. Because other hotels in the surrounding area have either been granted height variances or were constructed above the 35-foot height limitation without a variance, approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations.

On the other hand, the Planning Commission might determine that the physical characteristics of the property do not constitute "special circumstances" sufficient to warrant a finding of hardship to grant the variances requested. Or, the Planning Commission could determine that because the variances would result in a density that is greater than the majority of the other hotels in the same zone and vicinity, this would amount to a "special privilege," and as a result deny the variances.

The foregoing findings and facts are offered as mere examples of those that the Planning Commission could determine are necessary to either approve or deny the requested variances. However, the Planning Commission is not limited to only considering the above listed factors. As our local Court of Appeal pointed out in the unpublished opinion of *Hamilton v. City Council of the City of Dana Point* (Docket No. G034788; Filed November 7, 2005), attached as Supporting Document 5, a court must review the city council's decision under the deferential substantial evidence standard .. [which] mandates that a court consider all of the relevant evidence in the administrative record and, resolving all doubts in favor of the [city's] findings and decision, determine whether any reasonable person could have reached the same conclusion. (*Id.* at *11-12.) Under this standard a city's determination to either grant or deny a variance will be upheld so long as it is supported by substantial evidence in the record. And, upon review, a court cannot "disregard or overturn [a] ...finding for the reason that it is considered that a contrary finding would have been equally or more reasonable." (*Id.* at *20.) Consequently, "where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency 'in truth found those facts which as a matter of law are essential to sustain its . . . [decision].'" (*Ibid.*)

Coastal Development Permit Findings:

A Coastal Development Permit may only be approved by the Planning after making the following findings. Important factors and bases that could be included in the Findings for approval of a Coastal Development Permit are as follows:

1. Local Coastal Program: That the development project proposed by the application conforms with the certified Local Coastal Program in that the proposed uses are permitted within the certified LCP and, other than for building height and setbacks, the development conforms to the development regulations of the Dana Point Specific Plan (DPSP), is not proposed in an environmentally sensitive area, protects scenic vistas and corridors and conforms to the development guidelines of the DPSP while offering a variety of commercial uses that serves the needs of tourists and other visitors to the coast.
2. Zoning or District Regulations: That the application is consistent with the purpose and intent as well as the other provisions of the district regulations of the DPSP applicable to the property in that, other than for building height and setbacks, the development conforms to the development regulations of the Dana Point Specific Plan (DPSP) and the proposed hotel, conference and restaurant uses are permitted within the property's zoning classification.
3. California Coastal Act: That the project conforms with the public access and public recreation policies of the California Coastal Act in that the project provides a variety of commercial uses that supply the needs of tourists and visitors to the coast and those areas in which a Variance are necessary are located such that they do not affect coastal access, public recreation or coastal resources.
4. Variance Applications: Approval of the application will result in no modification of the requirements of the Certified Land Use Plan for Dana Point in that the variance for height and setbacks is applicable to the project only and does not propose any modification to the Certified LCP for any other property in the DPSP area.

CONCLUSION:

The Planning Commission must make ***all*** of the above findings, as required by the code, to approve the Proposed Project/ Modified Option B. If the Planning Commission fails to make even one of the prescribed findings, the project must be denied.

In order to approve the Proposed Project/ Modified Option B, the Planning Commission must:

- (1) Adopt Resolution No. 14-04-14-XX, certifying Final Environmental Impact Report (EIR SCH#2011061041); and
- (2) Adopt Resolution No. 14-04-14-XX, approving CDP09-0011, Variance V09-003, CUP09-0009 and SDP09-0032 for the Proposed Project/ Modified Option B,

adopting the “Doheny Hotel Statement of Overriding Considerations and Findings of Fact”, and adopting the Mitigation Monitoring and Reporting Program (Chapter 5 of the Final Environmental Impact Report)

In order to deny the Proposed Project/ Modified Option B, the Planning Commission must:

- (1) Adopt Resolution No. 14-04-14-XX denying CDP09-0011, Variance V09-0003, CUP09-0009 and SDP0-0032.

Accordingly, staff has drafted separate resolutions, for denial and for approval, depending on the Planning Commission’s decision.

John Tilton, AIA
City Architect/Planning Manager

Ursula Luna-Reynosa
Director of Community Development

ACTION DOCUMENTS:

- A. Draft Planning Commission Resolution for Denial No. 14-04-14-XX
- B. Draft Planning Commission Resolution for Approval No. 14-04-14-XX
- C. Draft Planning Commission Resolution for EIR No. 14-04-14-XX

SUPPORTING DOCUMENTS:

1. Location Map
2. FEIR SCH#2011061041
3. 11” x 17” architectural plans for Modified Option “B”
4. City of Petaluma v. County of Sonoma case
5. *Hamilton v. City Council of the City of Dana Point* (Docket No. G034788; Filed November 7, 2005)
6. Letters of Correspondence