

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-92-168-A8

Applicant: Dana Point Beach Resort, LLC

Location: 1 Monarch Beach Resort, Dana Point, Orange County
(APN: 06059-672-621-01)

Description of Original Project Approved Pursuant to Permit No. 5-92-168: Construction of a 400-key resort hotel and related visitor serving facilities on 30.5 acres. This development was part of the Monarch Bay Resort project. The proposed development included restaurants, conference facilities, resort offices, retail space, and 835 hotel parking spaces. The residential portion of the project site consisted of 81 attached units and 5 detached units. The hotel site was integrated with courtyards, gardens, pathways, resort vehicle system, public trails, and other visitor serving uses. The trail system linked the hotel and grounds to Sea Terrace Community Park and the golf course. Grading consisted of 395,000 cubic yards of cut and 45,000 cubic yards of fill.

Description of Pending Permit Amendment No. 5-92-168-A8: Construct a Lazy River and 2,620 sq. ft. pool/bar building as an additional pool/aquatic amenity for the Waldorf Astoria Monarch Beach Resort & Club. Includes 1,350 cu. yds. of grading.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the construction of a Lazy River and associated development located at the Waldorf Astoria Monarch Beach Resort & Club in an existing lawn area designated to be open for the public as required by a public access deed restriction associated with the underlying coastal development permit 5-92-168. A “Lazy River” is a recreational swimming pool in which patrons slowly float down a watercourse. These features are common at resorts.

The City of Dana Point has a certified Local Coastal Program (LCP) that was certified on November 5, 1997, that also incorporates the Monarch Beach Resort Specific Plan where the project is located; however, the original Coastal Development Permit (CDP 5-92-168) for the Monarch Beach Resort Hotel (now called the Waldorf Astoria Monarch Beach Resort & Club) was issued by the California Coastal Commission (CCC) prior to certification of the LCP. As a result, the CCC retains jurisdiction over the original CDP and any amendments thereto. Though the Commission retains jurisdiction over its previous permits, it must act on requests to amend the subject permit based on the standards of the certified LCP, unless the underlying permit dictate that the Coastal Act remains the standard of review. The primary issues raised by this application are its consistency with the Public Access and Recreation and Marine Resources and Water Quality policies of the LCP.

The underlying coastal development permit and amendments include 16 special conditions to protect coastal resources and maximize public access. Commission staff is recommending approval of the coastal development permit amendment application with and four additional special conditions. All special conditions the Commission imposed through its approval of the underlying permit would continue to apply.

As proposed and conditioned, the Lazy River would be open to the general public. The applicant has proposed the following: 1) Day Passes for the general public to the Lazy River will be available for purchase online, in person, and over the phone; 2) Day Passes for the general public to the Lazy River will be set at a year round price of no more than \$25.00; 3) a minimum of 25% of the Day Passes to the Lazy River will be for the general public; and 4) the general public using a Day Pass for the Lazy River will not pay for onsite parking. To further ensure that the Lazy River is available to the general public, a signage plan directing the general public to the Lazy River and a written description of the general public access available to the Lazy River are necessary. Therefore, to ensure that these project components are included as part of the project, Staff recommends the Commission impose Special Condition No. 17.

To increase coastal recreation and access benefits to underserved communities who cannot afford or have limited access to the recreation amenities, such as the proposed Lazy River, the applicant has proposed a coastal-themed Youth Educational and Access Program for a minimum of 240 underserved youth (students) per year taught by subject matter experts. These youth would be from low-income and other underserved communities that lack equitable access to coastal resources in Orange County, and the program would exist for the lifetime of the proposed development. The program, free of charge to all participants, would involve the hosted students taking part in an educational session in the morning, be provided lunch, and then invited to enjoy

the Lazy River in the afternoon. While the applicant has proposed these program elements, a more thoroughly defined plan has not yet been submitted. Thus, Staff recommends the Commission impose Special Condition No. 17, which requires the applicant submit, for review and approval by the Executive Director, a coastal-themed Youth Education and Access Program for a minimum of 240 underserved youth per year.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, staff recommends the Commission impose Special Condition No. 18, which requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction.

The proposed project includes a Pool Bar that will offer beverages and packaged food and as such, is a type of use that has the potential to use a large volume of plastics daily. Therefore, there is an opportunity with the proposed project to help reduce plastic pollution. Thus, to ensure that the applicant protects marine resources and water quality, staff recommends the Commission impose Special Condition No. 17, which requires the applicant to participate in a Marine Debris Reduction Program, meet all mandatory criteria of the selected program, and become a fully certified member of the selected program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders.

Landscaping is proposed as part of the project. The applicant's landscaping plan does not consist of non-invasive plants; however, it does consist of non-drought tolerant plants. Therefore, staff recommends the Commission impose Special Condition No. 17, which requires the applicant to submit a Revised Landscaping Plan, which consists of native or non-native drought tolerant plants, which are non-invasive.

The motion to approve the CDP application is on Page Five. The special conditions begin on Page Five.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Existing Site Plan

Exhibit 3 – Proposed Site Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit Amendment 5-92-168-A8 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit Amendment No. 5-92-168-A8 on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the Dana Point Local Coastal Program (LCP). Approval of the permit amendment 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that will apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number A8 once this amendment is issued by the Executive Director. All of the Commission's previously adopted special conditions continue to apply in the most recently approved form unless explicitly changed in this action, and the approved project includes any changes in the project description proposed by the applicant and approved by the Commission in this action. This will result in one set of adopted standard and special conditions. New conditions and modifications to existing conditions imposed in this action are shown in the following section.

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-92-168, and reflected in Appendix B, remain in effect. This permit amendment is granted subject to the following new special conditions shown in **bold, underlined**.

New Special Conditions

17. Recreation and Public Access to Lazy River. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, the following:

A. Lazy River Program. The applicant shall prepare a Lazy River Public Access Program that shall include, but not be limited to:

- 1. Day Passes to the Lazy River shall be available for purchase online, in person and over the phone.**
- 2. Day Passes for the general public to the Lazy River shall be set at a year-round price of no more than \$25.00 per person.**
- 3. A minimum of 25% of the Day Passes to the Lazy River shall be reserved for the general public.**
- 4. The general public using the Day Pass for the Lazy River shall not pay for onsite parking.**
- 5. Signage directing the general public to the Lazy River shall be installed prior to opening.**
- 6. A detailed written description of the general public access available to the Lazy River shall be recorded pursuant to Special Condition No. 19.**

B. A detailed plan for a year-round Youth Education and Access Program, for the life of the proposed development, that shall include free access to the lazy river for a minimum of 240 underserved youth per year from low-income and other underserved communities in Orange County that lack equitable access to coastal recreation.

- 1. The plan shall include or address the following:**
 - (a) Program Design. The program shall either: (1) coordinate a coastal themed educational program by providing the fees necessary to pay for a minimum of 240 scholarships per year for underserved youth to participate in an established coastal themed education program or (2) provide the fees necessary to an organization that has an established coastal themed educational program that meets the criteria set forth in this special condition for a minimum of 240 underserved youths per year. Payment of fees shall commence when the proposed development authorized by this CDP Amendment begins and shall continue annually, shall remain in effect throughout the life of the development approved by this permit.**
 - (b) Program Eligibility. The program shall include a process for determining eligibility of youth for the program. "Underserved youth" may include youth from low-income households, youth who attend Title 1 schools, foster youth, youth with disabilities, youth of color, and indigenous youth.**

(c) Programmatic Elements. **The submittal shall describe programmatic elements and staffing. Educational topics may include, but are not limited to, plastic pollution, ocean and marine science, climate change, and water quality. The program shall include components that provide an interactive ocean education experience for all participants. Preference shall be given to programs that provide transportation to and from the site, provide an opportunity for multiple experiences for continuing education, and/or work with local community-based organizations serving underserved youth to design and implement programmatic elements, including culturally sensitive programming.**

(d) Marketing and Outreach Strategy. **In order to increase the number of free opportunities to coastal resources for underserved youth groups from Orange County and substantially increase the awareness of the coast and activities to underserved communities, prior to commencement of the coastal themed education program, the applicant shall provide Commission staff with a proposed marketing plan for public outreach to reach underserved youth eligible for the program in Orange County. This can include, but is not limited to, outreach to Orange County school districts with Title 1 schools, afterschool programs and organizations serving youth in underserved communities, online advertisement, email, and digital marketing campaigns.**

(e) Program Evaluation. **The youth education and access program shall include a robust program evaluation component, including, but not limited to, definitions of program success, key performance indicators (or metrics), methods to measure metrics, and overall goals to assess program effectiveness. The program evaluation may be used to inform the initial program design, as well as future iterations of the program at the Waldorf Astoria Monarch Beach Resort & Club with the intent of it becoming a successful, scalable program to other coastal regions in California.**

2. The applicant (or the appropriate organization) shall provide an annual report to the Executive Director of the Coastal Commission, clearly detailing Special Condition No. 17 section (B) above. The report shall be provided annually, no later than January 30th, for the preceding calendar year.

C. A Marine Debris Reduction Program, which will be a comprehensive plan to reduce waste and single-use plastic foodware and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:

1. The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items)

2. Adhere to the following criteria at the lazy river:

- (a) **Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining.**
- (b) **Only provide paper straws, or straws made from naturally occurring materials or reusables, upon request.**
- (c) **Prohibit the use of expanded polystyrene (aka Styrofoam).**
- (d) **Prohibit the use of plastic bags on-site or for takeout/to-go orders.**
- (e) **Only provide single-use utensils, straws, condiments, and other accessory items upon request for takeout/to-go orders.**
- (f) **Prohibit the sale of beverages in plastic bottles.**
- (g) **Follow proper recycling practices.**

3. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP), Surfrider’s Ocean Friendly Restaurants (OFR), or a substantially similar program, meet all mandatory criteria of the selected program and become a fully certified member of the selected program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.

D. Two (2) full size sets of Revised Landscape Plans prepared by an appropriately licensed professional which demonstrates the following:

- 1. All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;**
- 2. All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;**
- 3. All landscaping shall consist of native drought tolerant non-invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See:**

<https://ucanr.edu/sites/WUCOLS/files/183488.pdf>. If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers; and

4. Only water efficient drip type irrigation shall be utilized.
 5. A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants.
 - E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit amendment or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
18. Construction Best Management Practices (BMPs). The permittee shall comply with the following construction-related requirements:
- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands, or their buffers;
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;

- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;**
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;**
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;**
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;**
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and**
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.**
- 19. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has/have executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of the property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction recorded against title to the property shall include a legal description of that entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.**

20. Filing Fee Requirement. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit the outstanding balance (\$160,105.00) of the total permit fee (\$161,375.00).

III. FINDINGS AND DECLARATIONS

A. Project Description and Location, Local Government Action, Prior Permit History and Standard of Review

Project Description and Location

The project site is located at the Waldorf Astoria Monarch Beach Resort & Club, formerly known as Monarch Beach Resort, located at 1 Monarch Beach Resort in the City of Dana Point ([Exhibit No. 1](#)). The project site is located within the Monarch Beach Specific Plan area of the City's Certified Local Coastal Program, which also incorporates the Monarch Beach Resort Specific Plan. The resort site sits on a 175-acre area and the specific project location area is a 34,100 square feet (.78 acre) area on the north side of the North Guest wing. This area is currently an internal flat lawn area that includes a 20-foot wide fire access lane. Adjacent to this lawn area is a public access sidewalk that runs parallel to this lawn area.

The proposed project includes the construction of a 543-foot long Lazy River in this lawn area that will serve as an additional pool/aquatic amenity for the Waldorf Astoria Monarch Beach Resort & Club ([Exhibits No. 2-3](#)). More specifically, the project involves the following:

1. Demolition of a portion of the existing transformer masonry screen wall to accommodate a new Pool Bar/Restroom Building.
2. Excavation and grading for the Lazy River structure: Estimated amount of cut is 1,350 cubic yards. Exported amount is 1,350 cubic yards and will be properly disposed of outside of the Coastal Zone.
3. Construction of a Pool Bar/Restroom Building. The majority of the building is on grade Level 1. A pool equipment Level B1 is located in a basement level. The overall size of the building is 2,620 square feet. The architectural character will be in keeping with the existing Mediterranean architectural style of the resort. A sloping hip roof will cover the building.

There will be a small service yard to access the basement level, as well as provide open storage area for lounge chairs and inner tubes. A new exterior stair will connect to the existing upper level of the hotel to access support and equipment areas.

4. The Pool Bar will offer water, soft drinks, and alcoholic drinks. A selection of packaged food will be offered. There is no cooking or food preparation. Drinks will be served to customers. However, there is a walk-up window for ordering as well.
5. The Restroom portion of the building provides restroom facilities and changing rooms.

6. Construction of Lazy River aquatic feature, faux rockwork, and perimeter concrete deck:

The Lazy River is a 543-foot long curving loop that is 4-feet deep and 12-feet wide minimum. There are multiple access points. There are two subterranean equipment vaults for the Lazy River's pumps. The perimeter concrete deck is sized and configured to accommodate the fire truck maneuvering route and provide a structural platform to support these vehicles. All pool water will be recycled, treated, and filtered prior to re-use.

The resort will prepare a life-guard safety program. The pool will be lighted at night.

7. Realignment of the exiting fire line.
8. The existing perimeter metal fencing for the lawn area is being replaced with new pool perimeter fencing 5-foot high per County Environmental Health standards. There are two large gates at the northeast and west to accommodate the movement of fire vehicles across the Lazy River deck.
9. Placement of a concrete walkway outside the Lazy River perimeter fencing to accommodate guests accessing the Lazy River and to exit the property and an open exterior stairway at the northwest end of the Lazy River deck for exiting onto a public way.
10. Construction of a raised whirlpool at the west end of the deck along with a small free-standing Towel Kiosk and two wood trellis areas on the north side to provide shade.
11. A landscape strip will be provided between the North Guest Wing and the walkway and Lazy River to act as a visual buffer. All new landscape planting will be drought tolerant, non-invasive vegetation. All new lawn areas will be synthetic turf to support the weight of fire vehicles. The Lazy River's island will feature unique water features and artificial rockwork and landscaping.
12. The users of the Lazy River aquatic amenity are hotel guests and Day Pass Users and no new additional parking is required, as sufficient parking is provided onsite. Access to the Lazy River is via the elevators and stairs of the North Guest Wing or via walking around the western end of the North Guest Wing. Hotel service will use the east emergency vehicle gate to provide cart access to maintain the Lazy River.
13. The Lazy River will be open during daylight hours from March through November. Special events may be scheduled in the evenings on the Lazy River's deck.

When the amendment application was initially submitted to the Long Beach Office, an application fee of \$1,270.00 was submitted as the applicant anticipated the project would be processed as an Immaterial Amendment. However, during review of the project, it was determined that the project did not qualify for an Immaterial Amendment and would instead be processed as a Material Amendment. Based on the Commission's Regulations, the application fee is 50% of the fee for the original project according to currently applicable fees. The original project would result in the maximum fee amount of \$322,750.00 based on development costs. 50% of that amount is \$161,375.00. The applicant has already paid \$1,270.00 for the Immaterial

Amendment application fee, so the remaining balance would be \$160,105.00. That balance has not yet been paid. Thus, the Commission imposes Special Condition No. 20, which requires the applicant submit the outstanding balance (\$160,105.00) of the total permit fee (\$161,375.00) prior to issuance of the coastal development permit.

Local Government Action

The City has a certified Local Coastal Program (LCP); however, the original Coastal Development Permit (CDP 5-92-168) for the Monarch Beach Resort Hotel (now the Waldorf Astoria Monarch Beach Resort & Club) was issued by the California Coastal Commission (CCC) prior to certification of the LCP. As a result, the CCC retains jurisdiction for the original CDP and any amendments thereto. The City of Dana Point Community Development Department issued an Approval In Concept dated October 5, 2021. No other discretionary approvals were necessary.

Prior Permit History

P-79-5539-(AVCO) [Approved]: On July 23, 1979, the concept of the Monarch Beach Resort Hotel was initially approved under Coastal Development Permit (CDP) No. P-79-5539 with specific approval of the hotel being granted under CDP No. 5-92-168. P-79-5539 has become known as the “Master Permit.” Major special conditions of the “Master Permit” included: the requirement that each construction project obtain a separate development permit, provisions for low and moderate cost housing (25% of total), low and moderate cost overnight accommodations, and monetary contributions into a “Coastal Access Fund” in conjunction with the construction of residential units. Additional special conditions imposed by the Commission included: a deed restriction requiring that the golf course and other recreational facilities be open to the public on a daily fee basis, public parking, an open space easement over the golf course area, a public trail system to provide beach access, and a signage program advertising that the facilities are open to the general public.

CDP No. 5-92-168 (Monarch Bay Resort Inc.) [Approved]: On August 11, 1992, the Commission approved the construction of a 400-key resort hotel and related visitor serving facilities on 30.5 acres. This development was part of the Monarch Bay Resort project. The proposed development included restaurants, conference facilities, resort offices, retail space, and 835 hotel parking spaces. The residential portion of the project site would consist of 81 attached units and 5 detached units. The hotel site would be integrated with courtyards, gardens, pathways, resort vehicle system, public trails, and other visitor serving uses. The trail system would link the hotel and grounds to Sea Terrace Community Park and the golf course. Grading would consist of 395,000 cubic yards of cut and 45,000 cubic yards of fill.

In approving CDP No. 5-92-168, the Commission imposed eight special conditions related to public access, signage plans, public parking, the implementation of a tram system, payment to a coastal access fund, conformance to an affordable housing program, phased development, and a future development deed restriction. In summary, the special conditions relevant to this permit amendment action required that common areas of the facility be open to the public and that a signage plan be implemented which informs the public of the public amenities available on-site.

CDP No. 5-92-168-A1 (Monarch Bay Resort Inc.) [Approved/Withdrawn]: On March 14, 1996, the Commission approved (Material Amendment) the deletion of a portion of the project consisting of 14 residential units, located at the subject site's northwest corner. This portion of the subject site would instead be included under a separate coastal development permit application, which would include a proposed golf clubhouse where the 14 residential units had previously been proposed. After this amendment was approved, the applicant withdrew the application.

CDP No. 5-92-168-A2 (Monarch Bay Resort Inc.) [Approved]: On May 7, 1999, the Commission issued an amendment for the deletion of a portion of the project consisting of 14 residential units, located at the subject site's northwest corner. Accordingly, the total number of approved residential units on the subject site would be decreased from 86 to 72 units. The northwest portion of the subject site, from which the 14 units were to be removed, would now be developed with a golf clubhouse and parking lot approved under Coastal Development Permit No. 5-96-006.

CDP No. 5-92-168-A3 (Monarch Bay Resort Inc.) [Approved]: On June 4, 1999, the Commission approved (Immaterial Amendment) the revision of the hotel floor plan and grounds, including a reduction in the total square footage of the structure from 498,000 square feet to 485,000 square feet. The proposed revisions would result in a reduction of the quantity of space devoted to office space, hotel service support areas and circulation areas. There was no proposed change to the quantity of space committed to use as guestrooms, retail space, spa, dining areas, ballrooms, and meeting and board rooms. There was no proposed change to the overall height of the structure and the quantity of grading. The applicant proposed to revise all sheets of Exhibit B of the deed restriction pursuant to Special Condition No. 1 of the underlying permit 5-92-168 depicting public access areas to conform the exhibit with the revised hotel floor and grounds plan in compliance with the Public Access special condition.

CDP No. 5-92-168-A4 (Monarch Bay Resort Inc.) [Approved]: On December 9, 2022, the Commission approved (Immaterial Amendment) the minor street realignment at the hotel/north residential entry, tour/shuttle bus drop off in front of the hotel and the residential/golf course clubhouse access road. The most significant change was the change to the drop off which would deliver guests closer to the hotel entry and would provide for better large bus ingress and egress from the site.

CDP No. 5-92-168-A5 (Monarch Bay Resort Inc.) [Rejected]: On July 26, 2002, the Commission rejected an amendment to amend the portion of the overall approved residential development (by amending two permits) affecting 20 units from an approved fourplex design to a mixture of duplexes and triplexes. The number of residential units would decrease from twenty units to eighteen units for a net reduction of two units. Associated development would include a lot line adjustment, two retaining walls totaling 510 linear feet and ranging in height from 0 to 8 feet, 2,000 cubic yards of fill, realignment of the existing golf cart trail, and deletion of a gated entry guardhouse from the project.

CDP No. 5-92-168-A6 (Monarch Bay Resort Inc.) [Approved]: On February 7, 2003, the Commission approved (Material Amendment) an amendment to the portion of the overall

approved residential development (by amending two permits) affecting 20 units from an approved fourplex design to a mixture of duplexes and triplexes. The number of residential units would decrease from twenty units to eighteen units for a net reduction of two units. Associated development would include a lot line adjustment, two retaining walls totaling 510 linear feet and ranging in height from 0 to 8 feet, 2,000 cubic yards of fill, realignment of the existing golf cart trail, and deletion of a gated entry guardhouse from the project.

CDP No. 5-92-168-A7 (Monarch Bay Resort Inc.) [Approved]: On September 9, 2015, the Commission approved (Immaterial Amendment) the revision of the project including: 1) the construction of a single-story, approximately 500 square foot restroom facility, which will include a total of four sinks and an outdoor shower; 2) the construction of a single-story, approximately 1,200 square foot pool bar, which would include a small service kitchen, dry storage, and bar; 3) the construction of a single-story, approximately 200 square-foot towel service facility; and 4) the removal of the existing fountain adjacent to the resort pool, and construction of two new spas. The existing pool deck would also be replaced.

Standard of Review

The Local Coastal Program (LCP) for this area of the City of Dana Point, commonly referred to as the “1996 LCP,” was effectively certified for the subject area by the Commission under City of Dana Point LCP Amendment 1-96 on November 5, 1997. Since the project site is within the Monarch Beach Specific Plan area, the certified local coastal program for this area also incorporates the Monarch Beach Resort Specific Plan. The original Coastal Development Permit (CDP 5-92-168) for the Monarch Beach Resort Hotel (now called the Waldorf Astoria Monarch Beach Resort & Club) was issued by the California Coastal Commission (CCC) prior to certification of the LCP. Though the Commission retains jurisdiction over its previous permits, it reviews this permit amendment application for conformity with the certified LCP.

B. Public Access and Recreation

Local Coastal Program (LCP) Policies: Land Use Plan (LUP)

Land Use Element (LUE)

Land Use Element (LUE) Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. (Coastal Act/30213, 30222, 30223)

Land Use Element (LUE) Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

Land Use Element (LUE) Policy 8.2 (Monarch Beach): Assure that adequate public recreational areas and public open space are provided and maintained by the developer as part of a new development. (Coastal Act/30210, 30213, 30240, 30251)

Land Use Element (LUE) Policy 8.5 (Monarch Beach): Require that the pedestrian and bike trail systems be extended throughout Monarch Beach and connected with the existing and proposed City wide trail system.

Land Use Element (LUE) Policy 8.6 (Monarch Beach): Maximize the provision of public trail and transit loop systems within the Monarch Beach area. The systems shall include access to and along the shoreline and to the visitor-serving and public places within Monarch Beach.(Coastal Act/30210)

Land Use Element (LUE) Policy 8.7 (Monarch Beach): Encourage public access, visitor-serving and residential land uses with a strong public component which allows the public to enjoy such visitor-serving commercial facilities.

Land Use Element (LUE) Policy 8.14 (Monarch Beach): Visitor-serving facilities within the Monarch Beach Resort Specific Plan area, including but not limited to the recreational time slots of the golf course and the parking lots of the hotel and golf course, shall be open to the public. (Coastal Act/30210, 30212.5, 30213)

Urban Design Element (UDE)

Urban Design Element (UDE) Policy 4.6: Preserve and maintain existing public accessways, and existing areas open to the public, located within visitor-serving developments in the coastal zone. (Coastal Act/30210, 30212)

Monarch Beach Specific Plan

2.6.11 Public Access to Hotel and Golf Clubhouse Complexes

Public access from Niguel Road and Pacific Coast Highway to the public trails, the resort vehicle system, and other public areas, will be available from the Hotel and Golf Clubhouse common areas. The Hotel and Golf Clubhouse have been planned and designed with freedom of flow between the interior and exterior areas, and linkage to the trail system.

A minimum of fifty percent (50%) of the-time slots of the golf course shall be-reserved for general fee-paying public use on a daily or hourly basis. If time slots or facilities set aside for non-members are not reserved 24 hours in advance, they may be reserved by members.

General public use (rental) of the banquet/conference center and exhibition hall facilities shall be allowed. The hotel shall not be used for private resort or time-share use. Public access shall be maintained to all common areas, including but not limited to the lobby/entrance areas, restaurants and dining facilities, pool areas, landscaped grounds, and walkways.

No gates shall be placed to restrict access to public areas unless it can be demonstrated that the proposed gates serve a public health and safety purpose. Should gates be allowed, signs shall be provided in a conspicuous location, easily read by the public, at each approved gate indicating the hours that the gates are to be unlocked for public access and how to contact the access owner and operator. The placement of fences adjacent to public access areas, exact fence heights, exact location of gates restricting access to public areas, signage, and establishment of hours of operation of the public access areas shall require a coastal development permit. Incorporation into the Specific Plan of standards for the placement of fences and gates across public access areas and hours of operation of public access areas shall be subject to a local coastal program amendment and shall not be effective until effectively certified by the Coastal Commission.

Local Coastal Program (LCP): Implementation Plan (IP)

Chapter 9.690—Coastal Development Permit

9.69.030 (c)(3)(B) and (D) state, in pertinent part:

(B) Development authorized by a coastal development permit issued by the Coastal Commission either prior to effective certification of a Local Coastal Program or on appeal after certification remains under the jurisdiction of the Coastal Commission for the purposes of condition compliance, amendment, extension, reconsideration and revocation.

(D) Coastal Development Permit P-79-5539

Development authorized by Coastal Development Permit P-79-5539, including both development approved on condition that the additional coastal development permit be obtained, and development approved on condition of the submission of additional plans for the review and approval of the Executive Director of the Coastal Commission, remains under the jurisdiction of the Coastal Commission for purposes of condition compliance and amendment. Condition compliance includes both obtaining a coastal development permit from the Coastal Commission for development that was approved on condition that a separate coastal development permit be approved, and obtaining approval from the Executive Director of the Coastal Commission for plans for development that was approved on condition of the submission of final plans. Coastal development permits, or approval of plans by the Executive Director of the Coastal Commission, for development authorized by Coastal Development Permit P-79-5539 shall be obtained from the California Coastal Commission.

The proposed project includes the construction of a Lazy River located on an area of the subject site that was required, pursuant to Special Condition No. 1(d) of the underlying permit 5-92-168, to be open to the general public. Commission staff and the applicant worked together to ensure that the proposed Lazy River would be consistent with the requirement of the special condition and that the general public would have access to this hotel amenity. As proposed, Day Passes for the general public to the Lazy River will be made available for purchase online, in person and

over the phone. In addition, to provide affordability, the applicant's proposal includes a Day Pass that will be set at a year round price of no more than \$25.00 per person. Also, a minimum of 25% of the Day Passes to the Lazy River will be for the general public. Lastly, the general public using the Day Pass for the Lazy River will not pay for onsite parking. To ensure that these proposed elements are part of the project, the Commission imposes Special Condition No. 17, which requires that: 1) Day Passes for the general public to the Lazy River shall be available for purchase online, in person and over the phone; 2) Day Passes for the general public to the Lazy River shall be set at a year round price of no more than \$25.00; 3) a minimum of 25% of the Day Passes to the Lazy River shall be for the general public; 4) the general public using the Day Pass for the Lazy River shall not pay for onsite parking; 5) a signage directing the general public to the Lazy River; and 6) a written description of the general public access available to the Lazy River.

To ensure that the Lazy River is made available to the general public, Special Condition No. 17 must be added to include acknowledgement of the proposed Lazy River in the areas required to be kept open to public access. Underlying Special Condition No.1(d) required that a deed restriction be recorded that included an exhibit showing all the common areas where public access shall be maintained. One of those common areas is the area where the proposed Lazy River will be located, which is currently a lawn area. On October 12, 1994, a deed restriction was recorded with the required exhibit showing all the common areas, including this lawn area, where public access shall be maintained. Additionally, on December 28, 1999, an updated deed restriction with public access exhibits was recorded in association with CDP Amendment 5-92-168-A3. Thus, a new deed restriction must be recorded pursuant to Special Condition No. 19 to detail the area that will be open to the public in and around the Lazy River.

Environmental Justice

The proposed project raises environmental justice concerns related to the inequitable distribution of public access and recreation benefits in California broadly and Dana Point specifically. Throughout California's history, low-income communities, communities of color, and other marginalized populations, generally referred to here as "underserved communities," have faced disproportionate social and physical barriers that disconnect them from coastal access and recreational opportunities. 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.¹ 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 inland². 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

¹ Robert Garcia & Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, *Stanford Journal of Civil Rights and Civil Liberties*. Pages 143 (2005)

² 39 Reineman, et al., Coastal Access Equity and the Implementation of the California Coastal Act , *Stanford Environmental Law Review Journal*, v. 36. Pages 96-98. (2016)

Coastal Act. Section 30604(h) states: “when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.”³ The Commission adopted an environmental justice policy in March 2019, committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency’s decision-making process and ensuring coastal benefits are accessible to everyone. 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 re-thinking 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.

The proposed project improves visitor serving and recreational facilities that would increase coastal recreation and access benefits available primarily to higher income households.

To increase coastal recreation and access benefits to underserved communities who cannot afford or have limited access to the recreation amenities, such as the proposed Lazy River, the applicant states that they would establish a coastal-themed Youth Education and Access Program for a minimum of 240 (per year) underserved youth (students) taught by subject matter experts. These youth would be from low-income and other underserved communities that lack equitable access to coastal resources in Orange County for the lifetime of the proposed development. The program would be free of charge to all participants.

Furthermore, the applicant states that the hosted students would take part in an educational session in the morning, be provided lunch, and then invited to enjoy the Lazy River in the afternoon. Educational topics may include, but are not limited to, plastic pollution, ocean and marine science, climate change, and water quality. In addition, the applicant states the content would be derived from the Coastal Commission’s Resources for California Educators: <https://www.coastal.ca.gov/publiced/directory/educate.html> and intends to coordinate with the Public Education Unit to determine the best curriculum for the program. In conjunction with their proposal, the applicant states that they will prepare a marketing plan for public outreach to reach underserved youth eligible for the program in Orange County. This can include, but is not limited to, outreach to Orange County school districts with Title 1 schools, afterschool programs and organizations serving youth in underserved communities, online advertisement, e-mail, and digital marketing campaigns. While the applicant has provided the previously discussed

³ Government Code Section 65040.12(e) defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

information regarding the creation of coastal-themed youth educational program for a minimum of 240 (per year) underserved youth (students) taught by subject matter experts, a more thorough defined plan has not yet been submitted. Thus, the Commission imposes Special Condition No. 17, which requires the applicant submit, for review and approval by the Executive Director, a coastal-themed Youth Education and Access Program for a minimum of 240 (per year) underserved youth (students).

The construction of the Lazy River presents an opportunity to provide an education and access program to benefit youth from underserved communities in Orange County by providing mitigation for the replacement of an existing open lawn area required to be available for the general public, with a Lazy River. Additionally, the program will provide an opportunity to increase coastal access benefits for underserved communities that have been historically excluded from the coast. The proposed education program for youth lower cost and free recreational opportunities is consistent with the City's certified LCP.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the public access and recreation policies of the City's certified LCP, including LUE Policies 3.3, 4.3, 8.2, 8.5, 8.6, 8.7, and 8.14; UDE Policy 4.6; Monarch Beach Specific Plan Policy 2.6.11; and IP Chapter 9.690.

C. Marine Resources and Water Quality

Local Coastal Program (LCP) Policies: Land Use Plan (LUP)

Land Use Element (LUE)

Land Use Element (LUE) Policy 4.4: Preserve, maintain, enhance, and where feasible restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. Sustain and where feasible restore general water quality and biological productivity as necessary to maintain optimum populations of marine organisms and for the protection of human health. (Coastal Act 30230)

Conservation Open Space Element (COSE)

Conservation Open Space Element (COSE) Policy 1.3: Conserve imported water by providing water conservation techniques, and using reclaimed water, water conserving appliances, and drought-resistant landscaping when feasible.

Conservation Open Space Element (COSE) Policy 1.7: Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow,

maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)

Conservation Open Space Element (COSE) Policy 1.8: Coordinate with the appropriate Regional Water Quality Control Board, the County of Orange and other agencies and organizations in the implementation of the National Pollution Discharge Elimination System Permits (NPDES) regulations to minimize adverse impacts on the quality of coastal waters. (Coastal Act/30231)

Conservation Open Space Element (COSE) Policy 1.9: All development shall meet the requirements of the California Regional Water Quality Control Board San Diego region's Waste Discharge Requirements for discharges of urban runoff from Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region or subsequent versions of this plan.

Conservation Open Space Element (COSE) Policy 1.11: Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (multiplied by an appropriate safety factor, i.e., 2 or greater for flow-based BMPs).

Conservation Open Space Element (COSE) Policy 1.12: Development that requires a grading/erosion control plan shall include a plan and schedule for landscaping and re-vegetation or graded or disturbed areas. If the grading occurs during the rainy season, the plan will include BMPs to minimize or avoid the loss of sediment from the site.

Conservation Open Space Element (COSE) Policy 1.14: The City, property owners, or homeowners associations, as applicable, shall be required to maintain any structural BMP device to ensure it functions as designed and intended. Owners of these devices shall be responsible for ensuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, shall be required to be carried out prior to the next rainy season.

Conservation Open Space Element (COSE) Policy 1.15: Commercial development shall incorporate BMPs designed to minimize or avoid the runoff of pollutants from structures, landscaping, parking and loading areas.

Conservation Open Space Element (COSE) Policy 1.17: Storm drain stenciling and signage shall be provided for new storm drain construction in order to discourage dumping into drains.

Conservation Open Space Element (COSE) Policy 1.18: Utilize efficient irrigation practices to minimize the potential for nuisance water runoff.

Conservation Open Space Element (COSE) Policy 1.19: Divert low-flow “nuisance” run-off to the sanitary sewer system for treatment, thereby avoiding dry weather flows to the beach of Harbor.

Conservation Open Space Element (COSE) Policy 2.20: The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/ 30231).

Potential construction phase impacts include improper storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or in a manner which allows such materials to be discharged into coastal waters via rain or urban runoff. These actions would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column.

In order to assure that the proposed project does not result in any accidental or unanticipated discharges, spills or other activities that could harm marine resources and water quality, the Commission imposes Special Condition No. 18, which requires the applicant to implement construction Best Management Practices (BMPs) to protect water quality during construction.

Plastic pollution is a persistent and growing problem worldwide that significantly impacts the health of our oceans and coasts. Roughly 8 million metric tons of plastics are estimated to enter the ocean each year, and the United States is one of the top 20 contributors to plastic pollution.⁴ Plastic has been found in a wide range of marine environments including the seafloor, surface water, the water column, and on beaches and shorelines. California communities are estimated to spend more than \$428 million annually to clean up and control plastic pollution. Plastic never truly degrades into its chemical components; instead, it physically breaks down into smaller and smaller pieces. Plastics under 5 millimeters in size are called microplastics, and are found worldwide, even in places considered pristine. Plastics have been found in the digestive tracts of marine organisms ranging from zooplankton to whales, and microplastics have been found in drinking water and food, including shellfish, salt, beer, and honey.⁵ In particular, the use of

⁴ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

⁵ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

single-use plastics in food and beverage packaging or serviceware make up seven of the top ten items found on Coastal Cleanup Day. Taken together food serviceware and food and beverage packaging make up nearly 37% of the items found on the beach; therefore, this makes reducing single-use plastics at restaurants a high priority. Styrofoam or other single-use materials that often are used at restaurants could result in adverse effects to marine wildlife, since these materials can make their way to the ocean, causing fish, seabirds, sea turtles, and marine mammals to become entangled in or ingest plastic debris, causing suffocation, starvation, and drowning. The elimination of non-reusable, non-recyclable, and non-compostable products and the reduction of packaging is an effective way to protect the health of wildlife and the environment.

The proposed project includes a Pool Bar that will offer water, soft drinks, and alcoholic drinks, as well as a selection of packaged food (there is no cooking or food preparation). The Pool Bar is a type of use that has the potential to use a large volume of plastics daily. Thus, there is an opportunity here with the proposed project to help reduce plastic pollution. Therefore, to ensure that the applicant protects marine resources and water quality, the Commission imposes Special Condition No. 17, which requires the applicant to participate in a Marine Debris Reduction Program, meet all mandatory criteria of the selected program, and become a fully certified member of the selected program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders.

The applicant has stated that landscaping is proposed. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at [Guide to Estimating Irrigation Water Needs.pdf \(ocpublicworks.com\)](#).

Commission staff has reviewed the submitted Landscaping Plan and determined that the plan includes numerous non-drought tolerant plants, including *Rhapis excelsa*, (*Lady Palm*), *Plumbago auriculata* (*Cape Plumbago*), and *Liriope muscari* (*Big Blue Lily Turf*). Therefore, the Commission imposes Special Condition No. 17, which requires the applicant to submit a Revised Landscaping Final Plan, which consists of native on non-native drought tolerant plants, which are non-invasive.

Conclusion

As conditioned, the Commission finds that the proposed project is consistent with the marine resources and water quality policies of the City's certified LCP, including LUE Policy 4.4; COSE Policies 1.3, 1.7, 1.8, 1.9, 1.11, 1.12, 1.14, 1.15, 1.17, 1.18, 1.19, and 2.20.

D. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Dana Point is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Dana Point Community Development Department determined that the proposed development is Categorically Exempt per Section 15303(c) Commercial structure in urbanized area less than 10,000 square feet) October 5, 2021. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and recreation and marine resources/water quality policies of the City's certified Local Coastal Program. As conditioned, there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

5-92-168-A8

Dana Point Beach Resort, LLC

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

CDP Application File No. 5-92-168-A8 and associated file documents

APPENDIX B – STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5-92-168 THROUGH CDP AMENDMENT NO. 5-92-168-A8

Note: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-92-168, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-92-168-A8. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** Any development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Public Access

Prior to issuance of the coastal development permit the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public access provisions:

- a. A minimum of 50% of all recreational facilities time slots of Hotel Village and the Golf Clubhouse shall be reserved for general fee-paying public use on a daily or hourly basis. If time slots or facilities set aside for non-members are not reserved 24 hours in advance, they may be reserved by members.
- b. General public use (rental) of the banquet/conference center and exhibition hall facilities.
- c. The deed restriction shall also ensure that the hotel area will be dedicated to hotel use, available in accordance with standard hotel practice for the general public, and that the development will not be used for private resort or time-share use which would inhibit or otherwise exclude casual use by the general public.
- d. Public access shall be maintained to all common areas of the development. The deed restriction shall include an exhibit, prepared by the applicant illustrating those areas to be maintained open to the general public. Said areas shall include, but not be limited to, the lobby, restaurants, pool areas, landscaped grounds, and walkways.
- e. No gates shall be placed in public access areas unless the applicant obtains a new permit or permit amendment and can show to the Executive Director, that the proposed gates serve a public health and safety purpose. Signs shall be provided at each approved gate indicating the hours that the gates are to be unlocked for public access and how to contact the access owner and operator. The placement of the fences, fence heights, location of gates, and hours of operation are subject to the review and approval of the Executive Director through a new permit or permit amendment.

2. Signage Plans

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval the following:

- a. A detailed signage plan with signs visible from the Coast Highway and Niguel Road, which invites and encourages public use of the public access opportunities. The plan shall clearly state proposed material and colors to be used, locations of signs, dimensions, and sign text. Appropriate signage for trail heads shall be

emphasized. Signs shall invite and encourage public use of access opportunities. Signage shall identify, provide information and direct users to all the key locations. Key locations include: public parking, golf course, golf clubhouse, beach access, tunnels, beach parking, park areas, tram operation, hotel areas, trails and other points of interest.

- b. An implementation plan for a primary visitor information center located at the hotel site which shall provide information about the available public uses throughout the resort complex. This information center shall be fully functional concurrent with the opening of the hotel.

3. Public Parking

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public parking provisions:

- a. The 835 parking spaces for the hotel shall be available to the general public. The hourly parking fee or total daily fee, for general public use, shall not be greater than that charged at the nearest State Beach Park parking facility. Validation stamps may be used for the parking facilities.
- b. Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a monitoring plan to gather parking and vehicle occupancy data for the hotel and golf clubhouse. The purpose of this study will be to evaluate the adequacy of parking for both the hotel and golf clubhouse. The monitoring program will collect data for two years, will commence when both the hotel and golf clubhouse are operational, and the applicant shall report annually the results of the study. Should parking prove to be deficient the applicant, through the permit amendment process, shall provide additional onsite parking.

4. Tram System

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a written agreement for recording the following:

- a. The applicant shall guarantee implementation of the tram system and reasonable use of the tram system by the general public. Priority may be given to hotel guests and all users of the tram will be allowed to carry with them beach gear. The tram shall operate at sufficient interval to meet demand by the general public. In general, the tram shall pick up and drop off riders at established stops including the hotel, golf clubhouse, Sea Terrace Community Park, and the coastal park (Bluff Park) by the existing beach access point between the Ritz Carlton and Ritz Cove.

- b. The operational plans of the tram system must be approved by the Orange County Environmental Management Agency, the City of Dana Point, and the Executive Director.
- c. The applicant shall guarantee that the tram system shall be operational concurrent with the opening of the hotel.

5. Coastal Access Fund

Prior to issuance of the coastal development permit, the applicant shall pay a fee of \$545.86 in 1992 dollars (based on the original fee of \$275 in 1979 dollars adjusted according to increases in the Consumer Price Index - U.S. City Average) for each new residential unit.

No fee shall be required for each "affordable" unit that is part of an affordable housing program. The fee shall be in renewable Certificates of Deposit, principal and interest payable for recreation and coastal transit or at the direction of the Executive Director of the California Coastal Commission or until such time a Coastal Access Program is established and administered by a separate legal entity. The Certificates of Deposit shall be placed in the possession of the California Coastal Commission for safekeeping. Upon the execution of a binding legal agreement between the agency implementing and administering the Coastal Access Program and the Coastal Commission and Coastal Conservancy which specifies the limitation on the use of the funds for the provision of coastal recreational transit services or other coastal access purposes in Orange County, the Certificates of Deposit shall then be transferred to that agency for use in implementing the Coastal Access Program.

6. Affordable Housing

Prior to the issuance of the coastal development permit the applicant shall show evidence, subject to the review and approval of the Executive Director that he has complied with the recorded agreement to provide affordable housing pursuant to the Low-Cost and Moderate-Cost Housing condition of the master permit P-79-5539. The applicant may submit a permit amendment to propose an alternative method of complying with the affordable housing requirements.

7. Phased Development

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a written agreement for recording the following:

Development shall be phased and shall comply with the phasing plan of the Monarch Beach Resort Final Specific Plan. Highest development priority shall be given to public open space uses, parks, trails, and public roads. Second priority shall be given to the hotel, tram, and golf clubhouse. Any changes to the phased development plan shall require the approval of the Executive Director. Development phasing shall include the creation of a public beach house consistent with local and Coastal Commission approvals.

8. Future Development

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit 5-92-168; and that any future improvements to the property or change in use or operation will require a permit from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

Note: CDP No. 5-92-168-A6, which was approved by the Commission on February 7, 2003, included new Special Conditions. However, these new Special Conditions were not integrated into the numbering of pre-existing Special Conditions. Thus, they are now being properly sequenced with the Special Conditions related to this property.

9. Prior Conditions [Previously Special Condition No. 1 of 5-92-168-A6]

Unless specifically altered by this amendment, all standard and special conditions attached to Coastal Development Permits 5-92-158 and 5-92-168, as amended, remain in effect. All standard conditions and special conditions previously imposed under CDP 5-92-158 and 5-92-168 and amendments thereto apply equally to these amendments.

10. Revised Signage Plan [Previously Special Condition No. 2 of 5-92-168-A6]

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall submit, for the review and approval of the Executive Director, a revised signage plan (Sheet L-3 and DWGs No. 1.1 and 2.1) for the project area which demonstrates that the public has access to Monarch Beach Resort North for purposes of accessing the recreational amenities, including the public parking at the golf clubhouse. The signage plan shall include a graphic showing the location, wording, and layout of each sign.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Public Access and CC&Rs [Previously Special Condition No. 3 of 5-92-168-A6]

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicants shall submit, for the review and approval of the Executive Director, wording (not the CC&Rs) that will be included in any CC&Rs which informs the homeowners on Monarch Beach Resort North that the street,

Monarch Beach Resort North, contains a public access easement which allows the public to utilize the street to access the recreational amenities.

- B. When prepared, a copy of the CC&Rs shall be sent to the Executive Director to demonstrate inclusion of the approved language informing the homeowners that Monarch Beach Resort North contains a public access easement. No changes to the approved public access section of the CC&Rs shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

12. Golf Course Design [Previously Special Condition No. 4 of 5-92-168-A6]

Through issuance of this permit amendment, the applicant acknowledges that if any conflict arises between golf course use and public use of any trails, view points, or public safety; the resolution of such a conflict shall not result in any diminution of public access. Any modification of the golf course which affects public use of the public trail system or viewpoints shall require an amendment or a new permit unless the Executive Director determines otherwise.

13. Water Quality [Previously Special Condition No. 5 of 5-92-168-A6]

The applicant shall implement the “Storm Water Pollution Prevention Plan, Monarch Beach Resort Tract 11889” prepared by Hunsaker and Associates (December 1998). Additionally the applicant shall conform to the Culbertson and Adams letter of October 17, 2002 which states that roof water will be collected and discharged to turf areas through a gutter and downspout system in conformance with the Landscaping Plan (Sheet L-2). Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

14. Revised Landscaping Plan [Previously Special Condition No. 6 of 5-92-168-A6]

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT

AMENDMENT, the applicants shall submit, for the review and approval of the Executive Director, a landscaping plan that utilizes, in combination, either native vegetation or non-native vegetation which is drought tolerant and non-invasive.

- A. This landscaping requirement shall be included in any CC&Rs for the residential development.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

15. Future Improvements [Previously Special Condition No. 7 of 5-92-168-A6]

This permit amendment is only for the development described in Coastal Development Permit Amendments Nos. 5-92-158-A2 and 5-92-168-A6. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit Amendments Nos. 5-92-158-A2 and 5-92-168-A6. Accordingly, any future improvements to the development authorized by this permit amendment, including but not limited to change in use and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit Amendments No. 5-92-158-A2 and 5-92-168-A6 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

16. Deed Restriction [Previously Special Condition No. 8 of 5-92-168-A6]

PRIOR TO ISSUANCE OF THESE COASTAL DEVELOPMENT PERMIT AMENDMENTS, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcels governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

17. Recreation and Public Access to Lazy River. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, the following:

- A. Lazy River Program. The applicant shall prepare a Lazy River Public Access Program that shall include, but not be limited to:
 - 1. Day Passes to the Lazy River shall be available for purchase online, in person and over the phone.

2. Day Passes for the general public to the Lazy River shall be set at a year-round price of no more than \$25.00 per person.
 3. A minimum of 25% of the Day Passes to the Lazy River shall be reserved for the general public.
 4. The general public using the Day Pass for the Lazy River shall not pay for onsite parking.
 5. Signage directing the general public to the Lazy River shall be installed prior to opening.
 6. A detailed written description of the general public access available to the Lazy River shall be recorded pursuant to Special Condition No. 19.
- B. A detailed plan for a year-round Youth Education and Access Program, for the life of the proposed development, that shall include free access to the lazy river for a minimum of 240 underserved youth per year from low-income and other underserved communities in Orange County that lack equitable access to coastal recreation.
1. The plan shall include or address the following:
 - (a) Program Design. The program shall either: (1) coordinate a coastal themed educational program by providing the fees necessary to pay for a minimum of 240 scholarships per year for underserved youth to participate in an established coastal themed education program or (2) provide the fees necessary to an organization that has an established coastal themed educational program that meets the criteria set forth in this special condition for a minimum of 240 underserved youths per year. Payment of fees shall commence when the proposed development authorized by this CDP begins and shall continue annually, shall remain in effect throughout the life of the development approved by this permit.
 - (b) Program Eligibility. The program shall include a process for determining eligibility of youth for the program. "Underserved youth" may include youth from low-income households, youth who attend Title 1 schools, foster youth, youth with disabilities, youth of color, and indigenous youth.
 - (c) Programmatic Elements. The submittal shall describe programmatic elements and staffing. Educational topics may include, but are not limited to, plastic pollution, ocean and marine science, climate change, and water quality. The program shall include components that provide an interactive ocean education experience for all participants. Preference shall be given to programs that provide transportation to and from the site, provide an opportunity for multiple experiences for continuing education, and/or work with local community-based organizations serving underserved youth to

design and implement programmatic elements, including culturally sensitive programming.

- (d) **Marketing and Outreach Strategy.** In order to increase the number of free opportunities to coastal resources for underserved youth groups from Orange County and substantially increase the awareness of the coast and activities to underserved communities, prior to commencement of the coastal themed education program, the applicant shall provide Commission staff with a proposed marketing plan for public outreach to reach underserved youth eligible for the program in Orange County. This can include, but is not limited to, outreach to Orange County school districts with Title 1 schools, afterschool programs and organizations serving youth in underserved communities, online advertisement, email, and digital marketing campaigns.
 - (e) **Program Evaluation.** The youth education and access program shall include a robust program evaluation component, including, but not limited to, definitions of program success, key performance indicators (or metrics), methods to measure metrics, and overall goals to assess program effectiveness. The program evaluation may be used to inform the initial program design, as well as future iterations of the program at the Waldorf Astoria Monarch Beach Resort & Club with the intent of it becoming a successful, scalable program to other coastal regions in California.
2. The applicant (or the appropriate organization) shall provide an annual report to the Executive Director of the Coastal Commission, clearly detailing Special Condition No. 17 section (B) above. The report shall be provided annually, no later than January 30th, for the preceding calendar year.
- C. A Marine Debris Reduction Program, which will be a comprehensive plan to reduce waste and single-use plastic foodware and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:
1. The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items)
 2. Adhere to the following criteria at the lazy river:
 - (a) Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining.
 - (b) Only provide paper straws, or straws made from naturally occurring materials or reusables, upon request.
 - (c) Prohibit the use of expanded polystyrene (aka Styrofoam).
 - (d) Prohibit the use of plastic bags on-site or for takeout/to-go orders.

- (e) Only provide single-use utensils, straws, condiments, and other accessory items upon request for takeout/to-go orders.
 - (f) Prohibit the sale of beverages in plastic bottles.
 - (g) Follow proper recycling practices.
3. Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP), Surfrider's Ocean Friendly Restaurants (OFR), or a substantially similar program, meet all mandatory criteria of the selected program and become a fully certified member of the selected program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.
- D. Two (2) full size sets of Revised Landscape Plans prepared by an appropriately licensed professional which demonstrates the following:
- 1. All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
 - 2. All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - 3. All landscaping shall consist of native drought tolerant non-invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <https://ucanr.edu/sites/WUCOLS/files/183488.pdf>). If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers; and
 - 4. Only water efficient drip type irrigation shall be utilized.
 - 5. A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants.

- E. No changes to the approved development shall occur without a Commission amendment to this coastal development permit amendment or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
18. Construction Best Management Practices (BMPs). The permittee shall comply with the following construction-related requirements:
- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands, or their buffers;
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
 - H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with

appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;

- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

19. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has/have executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of the property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction recorded against title to the property shall include a legal description of that entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

20. Filing Fee Requirement. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit the outstanding balance (\$160,105.00) of the total permit fee (\$161,375.00).