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STAFF REPORT – APPEAL SUBSTANTIAL ISSUE

APPEAL NO.: **A-2-MAR-08-028**

APPLICANTS: **Lawson’s Landing, Inc.**

LOCAL GOVERNMENT: **Marin County**

ACTION: **Approved with Conditions**

PROJECT LOCATION: 137 Marine View Drive, Dillon Beach (Marin County)
 (APNs 100-100-07, 100-100-08, 100-100-10, 100-100-21, 100-100-49, 100-100-58, 100-100-59, 100-201-01, 100-201-02, 100-202-01, 100-202-02, 100-203-01, 100-203-02, 100-203-03, 100-204-01, 100-204-02, 100-205-03, 100-206-02, 100-207-03, 100-208-01, 100-208-02, 100-211-01, 100-211-02, 100-212-01, 100-212-02, 100-213-01, 100-213-02, 100-214-01, 100-214-02, 100-215-01, 100-215-02, 100-216-01, 100-216-02, 100-217-01, 100-217-02, 100-218-01, 100-218-02, 100-220-06, 100-230-03, 100-100-22, 100-206-01, 100-100-48)

PROJECT DESCRIPTION: Recreational and agricultural use of the 940 to 960-acre Lawson’s Landing property, including: approximately 40 acres for up to 679 RV, tent, and travel trailer lots; potential additional 5.7 acres for RV, trailer, and tent lots; day use parking; boating facilities, mooring, and launching; support facilities including store, offices, recreational center, employee housing, boat sales and repair, fuel service and storage; waste water/septic system; water tanks; and road improvements.¹

APPELLANTS: Commissioners Sara Wan and Mike Reilly; Environmental Action Committee of West Marin, Marin Audubon Society, Sierra Club-Marine Group, Alliance of Permanent Trailers.

RECOMMENDATION: **Substantial Issue is Raised**

¹ Some of the described development is within the Commission’s retained coastal development permitting jurisdiction and thus not subject to this appeal. See, *infra*, for more detail.

EXHIBITS:

Click on the links
at right to go
to the exhibits.

1. Project Location
2. Site Plans Showing Wetlands & Other Resources
3. Notice of Final Local Action
4. Appeal from Commissioners Sara Wan and Mike Reilly
5. Appeal from EAC
6. Appeal from Marin Audubon Society
7. Appeal from Sierra Club-Marin Group
8. Appeal from Alliance of Permanent Trailers
9. Chronology by Marin County
10. Correspondence

1. EXECUTIVE SUMMARY

Marin County approved a coastal development permit for recreational and agricultural use of the 940 to 960-acre Lawson's Landing property on the shore of Tomales Bay and located at 137 Marine View Drive in the Dillon Beach community of Marin County. The approved development includes use of approximately 245 acres of land for campground related uses on numerous parcels, including approximately 40 acres in 7 areas for up to 679 RV, tent, and travel trailer lots; a potential additional 5.7 acre area for RV, trailer, and tent lots; day use parking; boating facilities, mooring, and launching; support facilities including store, offices, recreational center, employee housing, boat sales and repair, fuel service and storage; waste water/septic system; water tanks; and road improvements. Approximately 19 of the 40 acres approved for camping are in the Coastal Commission's retained jurisdiction and thus not subject to this appeal of the County's coastal development permit.

Five separate appeals received by the Commission contend that the approved development is inconsistent with the Marin County LCP's wetland, environmentally sensitive habitat, public services, and recreation and visitor serving policies (see Exhibits 4-8 for detail). Staff recommends that the Commission find that the appeal of the development approved by Marin County raises a substantial issue with respect to conformance with LCP policies, including for the following reasons.

First, the LCP prohibits most development within wetlands, consistent with Coastal Act 30233, and requires a 100-foot buffer for all wetlands from which most development is similarly excluded. However, the County approved RV camping and day use parking within buffer areas for identified wetlands, which are not allowed uses in wetland buffers. The County also approved a road for pedestrian and bicycle access in a wetland, which is not consistent with the LCP. In addition, the County's approval raises substantial issues with respect to required biological reports and mitigation requirements for any wetland fill that may be considered. Finally, one appellant's assertions that camping should not be prohibited in wetlands for various reasons do not raise a substantial issue, because camping is development, it must be permitted pursuant to the LCP, and it is not resource-dependent.

Second, the LCP requires avoidance and protection of identified environmentally sensitive habitat. However, the County approval allows camping immediately adjacent to central dune

scrub habitat. Central dune scrub is a sensitive plant community, and may constitute environmentally sensitive habitat as defined by the LCP. The County did not make a determination as to whether the dune scrub in the approved camping areas is environmentally sensitive land habitat as required by LUP Natural Resources Policy 5 or whether appropriate setbacks have been determined or required. Thus, a substantial issue is raised.

Third, the adequacy of public services raises a substantial issue because it is unclear whether the proposed septic system is feasible and the timing of its installation is uncertain.

Finally, the County has authorized the placement of residential trailers in an area zoned for commercial recreation visitor-serving uses. The zoning ordinance (C-RCR) prohibits residences and thus, a substantial issue is raised. In addition, the County's restrictions on stay raise concerns with the adequacy of the visitor-nature character of the approved development, as the entire peak season may be unavailable for general public use. In the alternative, another appellant's claims that restrictions on residential uses are inconsistent with the Coastal Act public access policies and the LCP's policies referencing existing development at Lawson's Landing also raise a substantial issue, because it is not clear whether the appropriate balance between public access and private interests is being met through the approval.

2. STAFF RECOMMENDATION

Substantial Issue

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

Motion:

I move that the Commission determine that Appeal No. A-2-MAR-08-028 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

Staff recommends a **NO** vote. Following the staff recommendation will result in the Commission conducting a *de novo* review of the application, and adoption of the following resolution and findings. Passage of this motion via a **YES** vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. A-2-MAR-08-028 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

3. PROJECT SETTING AND DESCRIPTION

3.1. Project Location and Site Description

The Lawson's Landing property is located immediately south of the community of Dillon Beach in Marin County, and is bounded by Tomales Bay on the south and Bodega Bay to the west. Access to the property is provided from Dillon Beach Road, Beach Avenue, and Cliff Street (see Exhibit 1). Lawson's Landing also spans the Coastal Commission's original permit jurisdiction and the County's LCP jurisdiction. Thus, coastal development permits are required from both the Commission and the County for any new development at Lawson's Landing.

The approximately 940-960 acre property consists of a combination of coastal sandspit, mobile sand dunes, dune scrub, wetlands, grasslands, hillside coastal scrub, and pasture lands, upon which campground recreation, mixed agricultural, and residential uses are currently located. Property elevation ranges from sea level on the west and south edges of the property, rising in the interior to a maximum of approximately 340 feet to the northeast corner ridgeline area. Sugar Loaf Hill, a sandstone promontory overlain by sand, is a prominent physiographic feature on the site. Dillon Creek is the primary drainage course on the site, running westerly through its upper portions roughly parallel to Dillon Beach Road. A number of smaller drainages run approximately southeasterly down the property, collect in a large low-lying meadow area, and infiltrate into the sand substrate or pass through to Brazil Cove on Tomales Bay.

3.2. Project Background

Recreational and agricultural use of Lawson's Landing dates back many decades (see Exhibit 9, Lawson's Landing Chronology prepared by Marin County). The Marin County Land Use Plan for the area, which was certified by the Commission in 1982, describes Lawson's Landing as including 46 campsites and 231 trailer sites.² The LUP also recognizes that limited expansion at Lawson's Landing for lower-cost visitor-serving facilities may be appropriate if water and sewage capacities are addressed, and if the various coastal resources of the site, including wildlife, vegetation, archeological, and sand dunes resources are protected. According to the County's staff reports, there are currently 1,233 camping lots on the property, including 1000 RV/campers/vehicles and 233 travel trailers.

Notwithstanding the LCP's acknowledgment of existing activities at Lawson's Landing and their potential expansion, the legality of the current land uses at the site with respect to the California Coastal Act, the LCP, and other County regulatory requirements is also in question. According to the County, in 1970 the Marin County Counsel advised that the extent to which existing uses at that time were legal non-conforming was uncertain, and that it appeared that a "sizeable portion"

² The Dillon Beach Community Plan, which amended the LCP in 1989, describes Lawson's Landing as a "popular recreational vehicle and camping resort, comprising 46 designated campsites (plus additional "informal" campsites on peak season weekends as demand warrants), 231 trailer sites, as well as a pier, boat launch, fuel dock, moorings, dry storage, boat and motor rentals, a clam barge, sport fishing charter boats, and a bait and tackle shop." DBCP, p. 6-2.

potentially were not legal. Given the difficulty of determining this, though, he recommended that the County require that a Master Plan be approved for the site to bring the potentially illegal and legal non-conforming uses up to appropriate standards, rather than pursuing an enforcement action.³ Since that time, Marin County has been working on various iterations of a Master Plan approval for the site, which has culminated in the recent Board of Supervisor's approval that is the subject of this appeal.

The Coastal Commission has also addressed the legality of existing development at Lawson's Landing for both its original jurisdiction and the County's LCP jurisdiction. In December 2006 the Commission approved a Consent Cease and Desist Order with the Lawson's Landing property owners that recognized that there was significant unpermitted development at Lawson's Landing that required a coastal development permit, including unpermitted grading, fill of wetlands, and the construction or placement of trailers, a campground, mobile homes, roads, restrooms, water lines and water tanks, sewage lines and leach fields, a sewage disposal station, sheds, garages, parking lots, a boat house, a snack bar, a shop, a boat mooring facility, boat yard, boats, a laundry facility, and a pier.⁴ Pursuant to this order, the Commission staff has been coordinating closely with the County of Marin and the applicants as the County has processed its local approvals and a coastal development permit for Lawson's Landing. The Commission staff is also working with the applicant on completing a coastal development permit application for the development within the Commission's original jurisdiction, and as of the date of this report, the application remains incomplete, awaiting additional information, including the applicant's proposed project description.

3.3. Project Description

The County approved a Master Plan Coastal Permit (CP 91-068) for Lawson's Landing to address existing unpermitted campground development and to provide conditions for future development on the 940-960 acre coastal property (see Exhibit 3). The approved development includes use of approximately 245 acres of land for campground related uses on numerous parcels, including approximately 40 acres in 7 areas for up to 679 RV, tent, and travel trailer lots; a potential additional 5.7 acre area for RV, trailer, and tent lots; day use parking; boating facilities, mooring, and launching; support facilities including store, offices, recreational center, employee housing, boat sales and repair, fuel service and storage; waste water/septic system; water tanks; and road improvements. Approximately 19 of the 40 acres approved for camping (and associated development) are within the Commission's original CDP jurisdiction and thus not subject to this appeal.

According to the County's notice to the Commission, the County's action on Lawson's Landing, referred to as approval of the Revised Reconfigured and Reduced Use Master Plan Alternative (Revised MPA) includes the following:

- A. Designation of six reconfigured existing campground areas, addition of one campground area and potential addition of one additional campground area;

³ Marin County Planning Commission Staff Report on Lawson's Landing, June 23, 2008, p. 6.

⁴ California Coastal Commission, CCC-06-CD-15.

- B. Reduction of peak daily vehicle trips from current levels;
- C. Relocation of all campground areas, including restrooms and showers, out of wetlands;
- D. Development of an uplands wastewater treatment and disposal facility and related infrastructure (including piping from campground areas);
- E. Maintenance of owner and campground employee housing;
- F. Permanent cessation of the sand quarry operation;
- G. Interim plan, detailing schedules for activities and structures, including existing septic system inspections and if necessary upgrades, fuel bunker upgrades, removal of excess ancillary structures, improved reservation system, closure of "new" wetland road, elimination of current camping in wetlands;
- H. Project phasing plan, detailing schedules for levels of use, activities and structures;
- I. Future submittal of design, architectural, engineering plans and programs showing activity areas, resource protection measures, existing structures to remain and new structures proposed (including restrooms, septic and Lawson's Center), pursuant to completion of a Precise Development Plan;
- J. New Lawson's Center in upland (Area 6) location outside of Alquist Priolo zone, with potential maximum of 15,000 square feet for recreation support services, including store, boat repairs, retail sales, storage, fueling, administrative offices, recreation and meeting rooms, and a laundry;
- K. Grazing Management Plan, with continued cattle grazing, fencing, pasture rotation, and integration with the Adaptive Management Plan;
- L. Adaptive Management Plan;
- M. Elimination of over 120,000 square feet of excess ancillary structures from permanent travel trailers.
- N. Development of an Emergency Response Plan, including shelter-in-place, siren, and evacuation;
- O. Upgrades to Sand Haul Road (along the existing, primary alignment from Dillon Beach Road to Area 6) for primary vehicle access, subject to acceptance of a study at the Precise Development Plan stage of its use for regular vehicle access;
- P. Management of ground disturbing activities;
- Q. Continuation and expansion of visitor environmental education program;
- R. Implementation of new travel trailer lease agreement: and
- S. Voluntary merger of small parcels in the C-RCR zoned district.

According to the County's adopted conditions of approval for the project, the amount of camping potentially authorized by the County in the various areas delineated at Lawson's Landing is shown in the table below. Various restrictions apply as well. For example, the 146 camping lots in Areas 4 and 5 were authorized for only five years, after which, according to the County, it appears that no camping would be feasible consistent with the LCP's wetlands policies.

| Area | CDP Jurisdiction & Area (acres) | | Camping Lots (RV, tent, and trailer sites) | Restrictions |
|---------------|---------------------------------|-------------|--|--|
| | CCC | MC | | |
| 1 | 4.6 | 0 | 125 | Low Impact Development drainage designs on perimeter |
| 2 | 10.0 | 2.0 | 263 | LID requirements; various occupancy limits ⁵ |
| 3 | 4.4 | 3.7 | 100/50 ⁶ | 5 yrs only on seasonal basis within 100 ft wetland buffer ⁷ |
| 4/5 | 0 | 8.7 | 146/0 | 5 yrs only on seasonal basis |
| 6 | 0 | 4.7 | 25 | |
| 7 | 0 | 1.9 | 20 | Tent camping, must meet 100 ft wetland buffer |
| 8 | 0 | 5.7 | Potential Use (50-100) ⁸ | Requires additional biological evaluation |
| TOTALs | 19.0 | 26.7 | | |
| | 45.7 | | 679/533-583⁹ | |

The County's approval addresses new development in both the Commission's original jurisdiction and the County's LCP jurisdiction. Only that development which is within the LCP jurisdiction is addressed in this coastal development permit appeal. The identification of the precise development within the Commission and County's respective jurisdictions has not yet been determined by Commission staff. However, according to County data, at least 19 of the 40 acres approved for camping development are within the Commission's jurisdiction. As summarized in the table, this area would likely include upwards of 300 of the approved camping lots, including 125 in Area 1, and a substantial portion of the trailer lots.¹⁰

⁵ See Exhibit 3, p. 43, Condition 13.

⁶ Data provided by the County indicates approximately 50 lots may be feasible outside of identified wetland areas and 100 foot buffers.

⁷ Seasonal is defined as beginning on the Friday immediately preceding the Memorial Day holiday and ending on October 15.

⁸ The County has previously indicated that approximately 50 camping lots could be sited in Area 8 consistent with the wetlands policies of the LCP.

⁹ The County's action authorizes up to 679 camping lots for at least five years. Based on data provided by the County, this number would be reduced to between approximately 533 and 583 after five years, assuming that between 50 to 100 lots were approved for Area 8.

¹⁰ According to information from the Applicant in the County record, there are 178 existing trailers in the Commission's retained jurisdiction.

4. APPEAL PROCESS

4.1. Local Government Action

On November 18, 2008 the Marin County Board of Supervisors approved, with conditions, the Coastal Permit, Master Plan, and Tidelands permit for the development generally described above (see Exhibit 3).

4.2. Filing of Appeal

On December 1, 2008 the Commission received notice of the County's final action approving a coastal development permit for the project. The Commission's appeal period commenced the following working day and ran for ten working days thereafter (December 2nd through December 15th, 2008). On December 10, 2008, within the 10-working day appeal period, the Commission received an appeal from Commissioners Sara Wan and Mike Reilly (Exhibit 4). On December 15, 2008, within the 10-working day appeal period, the Commission received additional appeals from the Environmental Action Committee of West Marin, the Marin Audubon Society, the Sierra Club-Marine Group, and the Alliance of Permanent Trailers (Exhibits 5-8). Following receipt of the appeals, the Commission mailed a notification of appeal to the County and the applicant.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on December 10, 2008. The 49th day will be January 28, 2009. In accordance with the California Code of Regulations, on December 11, 2008, staff requested all relevant documents and materials regarding the subject approval from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. As of the date of this report, the Commission had not received the local record from the County.

4.3. Appeals under the Coastal Act

After certification of local coastal programs, the Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area; or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may also be appealed, whether they are approved or denied by the local government.

The approved development is located between the sea and the first public road paralleling the sea, and thus within the Commission's appeal jurisdiction as defined in Section 30603 (a)(1) of the Coastal Act. Pursuant to Section 30603 (b)(1) of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. **Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.**

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is located between the first public road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

4.4. Standard of Review

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5.

5. SUBSTANTIAL ISSUE ANALYSIS

5.1. Appellants' Contentions

The Coastal Commission received 5 appeals of the County's action on the approved development. The full text of the appeals is included in Exhibits 4-8. The appeals include the following contentions:

1. Wetlands

The appellants contend that Marin County's Coastal Permit approval is inconsistent with LCP wetland policies because the County approved camping sites and parking within 100 feet of wetlands inconsistent with LCP Policy No. 4. The appellants also contend that the County approval allows grazing in wetlands and a pedestrian and bicycle path in wetlands, inconsistent with the uses allowed in wetlands under the LCP. In addition, appellants contend that special conditions (EIR mitigations) that require future development proposals to include Coastal Act wetland delineations conducted by the applicant, are not consistent with LCP requirements that such delineations be conducted by a qualified ecologist; and that these same conditions allow future wetland fill to be mitigated at a "no net loss" ratio, which is inconsistent with Diking, Filling, and Dredging policies that require *at a minimum*, acquisition of equivalent areas of equal *or greater* biological productivity. Appellants argue that since it is unclear whether the adopted mitigation would meet this standard, the County's approval is inconsistent with the wetland protection policies of the certified LCP. Appellants also raise claims concerning the adequacy of a required Adaptive Management Plan to protect the site's resources (Exhibits 4-7).

In the alternative, appellant *Alliance of Permanent Trailers* asserts that camping should be allowed in wetlands because (1) camping is not development; (2) even if it is development camping in wetlands and wetland buffers was recognized in the LCP; and (3) even if such camping requires a coastal development permit, it is resource-dependent and therefore allowable (Exhibit 8).

2. Coastal Dunes and Other Land Sensitive Habitats

Appellants contend that the County approved the development without analyzing or protecting central dune scrub. Camping permitted in Area 3 is adjacent to central dune scrub and no determination was made as to whether this is sensitive land habitat as required by LUP Natural Resource Policy 5, and as such, an appropriate setback was not determined or required, inconsistent with this LCP policy. Further, the appellants contend that EIR mitigations, which are incorporated as special conditions into the coastal permit approval, allow trails to be developed within the foredunes (See special condition 32(E)). In fact, the appellants further contend, the approved project includes a system of roads that run through wetlands, wetland buffers, coastal dunes, and dune scrub, inconsistent with LUP Natural Resources Policy 5(b).

This policy states that Public access to sensitive habitat areas, including the timing, intensity, and location of such access, shall be controlled to minimize disturbance to wildlife.

In addition, appellants contend that other special conditions allow disturbance to California Red Legged Frog and habitat for special status invertebrates if it cannot be avoided and if in consultation with the U.S. FWS. Appellants contend that this is also inconsistent with the LUP Natural Resources Policies, which require all environmentally sensitive habitats to be avoided (Exhibits 4-7).

3. Public Services

Appellants contend that conditions of approval do not assure that adequate public services, namely sewage disposal, will be available to serve the development, inconsistent with LUP Unit II Public Services policies. Special condition no. 7(C)(10) requires the applicants to submit evidence demonstrating the feasibility of the upland sewage disposal site. Feasibility should have been demonstrated prior to Master Plan and Coastal Permit approval in order for the County to appropriately make the finding required in Policy 1. Instead, conditions of approval do not require the precise development plan (PDP) application for the new sewage disposal system to be submitted for up to three years, which means the system will not be constructed for many years. In the meantime, the substandard septic systems will continue to operate.

Appellants also contend that the project does not identify any public entity that has formally assumed responsibility for inspecting, monitoring, and enforcing the waste disposal system, inconsistent with LUP Unit II Public Services Policy 3(a)(4) (Exhibits 4, 5, 7).

4. Recreation and Visitor Serving Policies

LUP Unit II Recreation and Visitor Serving Policy 1 states that public recreational and visitor serving development should be encouraged, but must be undertaken in a manner which is consistent with the protection of natural resources. Appellants contend that this policy encourages low intensity uses over more intensive recreational development, such as RV campgrounds. In contravention to this policy, appellants contend that the approved project is oriented towards RV camping, with no areas set aside for lower-intensity uses, such as tent camping. Further, Policy 3(g), which is specific to Lawson's Landing, states that any expansion shall take into account environmental constraints and include measures to protect natural resources, and shall include improvements in sewage disposal facilities. Appellants contend that the County approval allows development within and adjacent to wetlands and dunes and these resources are not adequately protected with buffer areas, as required by the LCP.

In addition, appellants contend that the approved project is not based on thorough planning studies and the development plan does not contain adequate measures to protect the site's resources as required by LUP Recreation and Visitor Serving Policy 3(g)(2). This is because the Adaptive Management Plan as required by the County, which was required in order to remedy over 40 years of negative impacts from unpermitted development, considered existing uses as its "baseline" in the Environmental Impact Report (EIR), without addressing the consistency of

those uses with the certified LCP or evaluating their ongoing negative impacts. Therefore, appellants conclude that the County approval is inconsistent with Recreation and Visitor Serving Policies 1 and 3 (Exhibits 4-7).

5. Travel Trailer approval inconsistent with C-RCR Zoning

The Coastal, Resort, and Commercial Recreation District (C-RCR) of the certified zoning code prohibits residential uses, including mobile home parks. There are approximately 233 existing unpermitted residential trailers on the Lawson's Property, a portion of which are located in the County's coastal permitting jurisdiction. The County approval requires a 90 day stay limitation for trailer owners, and the applicants must submit a Plan to the County to convert trailers to visitor serving uses. Appellants contend that the short-term occupancy plan required by special condition 13 is inconsistent with the requirements of the C-RCR District. Allowing owners to stay 90 days per year could result in the trailers being used residentially for the entire summer by their owners, relegating visitor use of the trailer area to unpopular times of the year, inconsistent with the purpose of the C-RCR, which is to create and protect areas within the coastal zone for visitor serving facilities. In addition, several residential trailers are excluded from the stay limitation under the County's approval. The C-RCR zoning district allows recreational uses only and prohibits residences. Therefore, Appellants contend that the County approval is also inconsistent with Sections 22.57.151 and 22.57.152 (Regulations for the C-RCR district) of the certified zoning code (Exhibits 4, 5, 7).

6. Travel Trailer approval inconsistent with Coastal Act and LCP Public Access and Recreational Visitor-serving policies

In contrast to the Appellants' claim summarized above, Appellant *Alliance of Permanent Trailers* contends that conditions 13 and 20 of the County's approval inappropriately restrict existing trailer uses and are thus inconsistent with the Coastal Act's mandate to protect public access and recreation; and with the LCP's policies to protect visitor-serving uses at Lawson's Landing, because the LCP, including the Dillon Beach Community Plan, acknowledged that the existing trailer uses were recreational uses at the time of LCP certification. The Appellant also claims that the restrictions on the travel trailers are inconsistent with the Coastal Act 30210 and 30214 policies to balance public access with private property interests, and that they lack the required nexus, constitute a takings of private property, and are barred by the doctrine of laches (Exhibit 8).

5.2. Analysis

In this case, for reasons further specified below, the Commission exercises its discretion and determines that the appeal of the development approved by the County raises a substantial issue of conformity of the approved development various policies of the certified LCP.

5.2.1. Wetlands

Applicable Policies

Marin County certified Land Use Plan Unit II Natural Resources Policies provide:

4. Wetlands. *Wetlands in the Unit II coastal zone shall be preserved and maintained, consistent with the policies in this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in and adjacent to wetlands shall be evaluated as follows:*
 - a. *Diking, filling, and dredging of wetlands shall be permitted only in conformance with the policies contained in the LCP on this subject, presented on page 136 [Diking, Dredging, and Filling Policies]. In conformance with these policies, filling of wetlands for purposes of single family residential development shall not be permitted.*
 - b. *Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, bird watching, and boating.*
 - c. *No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities.*
 - d. *A buffer strip of 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Where appropriate, the required buffer strip may be wider based on the findings of the supplemental report required in (e). Development activities and uses in wetland buffer shall be limited to those specified in (a) and (b) above. [emphasis added]*
 - e. *As part of the application for a coastal development permit on any parcel adjacent to Tomales Bay, except where there is no evidence of wetlands pursuant to the Coastal Commission's guidelines, the applicant shall be required to submit supplemental biological information prepared by a qualified ecologist at a scale sufficient to identify the extent of existing wetlands, based on Section 30121 of the Coastal Act and the area of the proposed buffer areas. [emphasis added.]*

Marin County certified LUP Unit II Diking, Filling, and Dredging Policy 2:

2. Acceptable purposes. *The diking, filling, and dredging of open coastal waters, wetlands, and estuaries shall be limited to the following purposes:*
 - a. *New or expanded commercial fishing facilities.*
 - b. *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - c. *Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - d. *Mineral extraction, including sand for restoring beaches, except environmentally sensitive areas.*
 - e. *Restoration purposes.*
 - f. *Nature study, aquaculture, or similar resource-dependent activities...*

Marin County certified LUP Unit II Diking, Filling, and Dredging Policy 3:

3. Conditions and standards. *Diking, filling, or dredging may be permitted for the purposes specified above, provided that the following conditions and standards are met:*
 - a. *There is no feasible less environmentally damaging alternative.*
 - b. *Where feasible, mitigation measures have been provided to minimize adverse environmental effects.*
 - c. *The activities are planned, scheduled, and carried out to avoid significant disruption to marine and wildlife habitats, fish and bird breeding and migrations, and water circulation.*
 - d. *The need for both initial and maintenance dredging shall be minimized by careful design and location of facilities with respect to existing water depths, water circulation, siltation patterns, and by efforts to reduce controllable sedimentation.*
 - e. *In estuaries and wetlands, the diking, filling, or dredging shall maintain or enhance the functional capacity of the wetland or estuary.*
 - f. *Dike and fill projects in wetlands shall include mitigation measures specified in Section 30607.1 of the Coastal Act.*

Coastal Act Section 30607.1, incorporated into the LCP, states:

Where any dike and fill development is permitted in wetlands in conformity with Section 30233 or other applicable policies set forth in this division, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or the replacement site shall be purchased before the dike or fill development may proceed. The mitigation measures shall not be required for temporary or short-term fill or diking if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time.

The LCP's definition of development, found in Appendix B of the LUP, mirrors the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to,

subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Discussion:

Camping in Wetland Buffers

Certified Land Use Plan Unit II Natural Resources Policy No. 4 requires a 100-foot buffer between all development and the edge of wetlands, and development activities within the buffer are strictly limited to nature study and other resource dependent uses, commercial fishing facilities, incidental public service purposes, mineral extraction, and restoration. As described below, the County approval allows camping sites and parking within 100 feet of delineated wetlands, inconsistent with the LCP.

As part of the EIR process, wetlands and their 100 foot buffers were identified for the Lawson's Landing site (see Exhibit 2). This delineation included wetlands as defined by the LCP and the Coastal Act. Based on this wetlands identification, the County approval does not allow camping lots directly in wetlands. However, the approval does allow camping in wetland buffers in areas 1-5, much of which is in the County's certified LCP jurisdiction and thus subject to the 100 foot buffer requirements of the LCP. As described by the County's findings:

IV. ...

B. The Revised MPA would allow limited encroachments for an interim period of up to 5 years into the wetland buffer areas in Areas, 3 and 4 and 5 with provisions to implement an Adaptive Management Plan approach to evaluate the effects of camping activity on sensitive habitats.¹¹

And,

V. ...

¹¹ Exhibit 3, p. 30

- E. The Revised MPA would ensure that only resource-dependent activities would occur within designated wetlands, while minimizing non-wetland-dependent uses in the buffer uses.*
- F. The Revised MPA would comply with the intent of the Community Plan's wetland policies while providing for limited encroachments into the buffer that do not impair the attainment of the overall intent of these policies.¹²*

More specifically, condition 14 allows seasonal camping within wetland buffers in Area 3 for a period of 5 years, and references the possibility of extending such uses through an amendment of the County's approval. Condition 15 allows seasonal camping to occur inside wetland buffers in areas 4 and 5 for a period of five years.¹³ Condition 8 of the County's approval allows day use visitor parking in Areas 1-7 outside of wetlands until such time as a subsequent permit is approved for certain precise development allowed by the County's Master Plan approval, but the condition does not explicitly require a buffer between wetlands and parking.

Overall, the County's findings conclude that "the Revised MPA would be in substantial conformance with LCP's wetland policies."¹⁴ However, "substantial conformance" with the policy is not the standard. Rather, the County's LCP does not allow camping or parking uses within 100 feet of wetlands and no mechanism is provided in the LCP to vary this standard. The County's approval allows seasonal camping in wetland buffer areas for at least five years. In addition, although this development may be removed eventually, it is unclear from the County's approval when this might occur. Therefore the appeals raise a substantial issue of conformance with LUP Unit II Natural Resources Policy No. 4.

Other Development in Wetlands

The County's approval also addresses on-going agricultural land uses at Lawson's Landing. LUP Unit II Natural Resources Policy No. 4 prohibits grazing within wetlands except for areas reclaimed and used for such. According to the County, the Applicant's Master Plan Application includes a proposal for a Grazing Management Plan, one stated purpose of which is to evaluate the effects grazing has on plant communities on the site.¹⁵ A Certified Rangeland Manager is proposed to assist in preparation of the Grazing Management Plan. The County approval specifically allows grazing in wetlands:

- D. The LCP prohibits grazing or other agricultural uses within wetlands. It has been historic practice by the property owners to permit seasonal grazing in the wetland areas on the property. The Revised MPA would allow this practice to continue until further evaluation of the impacts of the grazing within wetlands can be made through review of the required Grazing Management Plan and Adaptive Management Plan.¹⁶*

¹² Exhibit 3, p. 32.

¹³ Although condition 13 allows camping in the wetland buffer in Area 2, it appears that the portion of Area 2 that is in the County's jurisdiction may be outside of the buffer area. Further evaluation of Area 2 would be needed to address this question.

¹⁴ Exhibit 3, p. 33.

¹⁵ Exhibit 3, p. 4.

¹⁶ Exhibit 3, p. 33.

It is not apparent that the County specifically evaluated the consistency of proposed agricultural uses with LCP wetlands policy 4(c). Special condition 37 requires submittal of a Grazing Management Plan. Based on the record currently in front of the Commission, specific coastal development permit authorization of grazing in wetland areas is inconsistent with LCP wetlands policy 4(c), and raises a substantial issue of conformance of the approval with the LUP.

The County approval also permits a pedestrian and bicycle path in wetlands on a road currently used for vehicle traffic. While vehicle traffic would be prohibited from the road under the County's approval, the road still would provide pedestrian and bicyclist access through an identified wetland.¹⁷ Condition 36(C)(6) requires the future identification of roads to be abandoned, including plans for removal and restoration of such areas, but the approval does not clearly require removal and restoration of the road in wetlands that is specifically identified for continued use as a pedestrian and bicycle access.¹⁸

Roads, even if limited to pedestrian and bicycle access, are not permitted in wetlands under the LCP unless they are resource-dependent and if they meet all of the LCP standards for the filling of wetlands, including that there is no feasible, less environmentally-damaging alternative (see above). There is no finding that the proposed pedestrian and bicycle road through the wetland is necessary, nor are there any requirements that the road be developed as an interpretive wetland and nature trail. Therefore, the appeals of the County's approval raise a substantial issue of conformance with the LUP, because a general trail is not an allowable use in wetlands pursuant to LUP Unit II Natural Resources Policy No. 4 and Unit II Diking, Filling, and Dredging Policy No. 2.

Other Wetlands Issues

Condition 32(N)(1) of the County approval requires a Coastal Act wetland delineation for future development proposals, but allows it to be done by the project applicant OR a qualified biologist. This raises a substantial issue of conformance with Nat Res Policy 4(e), which requires supplemental biological information to be prepared by a qualified ecologist (see Exhibit 3).

Condition 32(N)(5) requires restoration/mitigation of allowed fill of wetlands to occur so that there is "no net loss" of wetlands, and states that this is required by the LCP. LUP Unit II Diking, Filling, and Dredging Policy No. 3 requires that there be no feasible less damaging alternative to fill and that fill projects in wetlands include mitigation measures specified in Section 30607.1 of the Coastal Act. Section 30607.1 requires *at a minimum*, mitigation measures which include acquisition of equivalent areas of equal *or greater* biological productivity. LUP Dike and Fill Policy 3(e) requires that filling shall maintain or enhance the functional capacity of the wetland. The adopted mitigation does not clearly require avoidance of fill unless it is the least environmentally-damaging feasible alternative. Further, it is unclear whether the adopted mitigation will meet this standard. For example, while the "no net loss" standard may achieve appropriate mitigation of allowed fill, it is not necessarily equivalent to the mitigation requirements of 30607.1. Therefore, the appeals relating to Special Condition

¹⁷ Exhibit 3, p. 41, Condition 7(C)(5).

¹⁸ Id. p. 56.

32(N)(5) of the County approval raise a substantial issue of conformance with LUP Dike and Fill Policy 3.

Wetlands Issues in the Alternative

Appellant *Alliance of Permanent Trailers* asserts that camping should be allowed in wetlands because (1) camping is not development; (2) even if it is development camping in wetlands and wetland buffers was recognized in the LCP; and (3) even if such camping requires a coastal development permit, it is resource-dependent and therefore allowable (Exhibit 8).

The definition of development in the Marin County LCP is identical to the Coastal Act and includes the placement or erection of any solid material or structure on land, grading, a change in the density or intensity of use of land, and the construction of any structure, including buildings, roads, and pipes. The County's approval authorizes a wide variety of land uses at Lawson's Landing, including camping lots, trailers, roads, septic systems, utilities, day use parking, and trails. The authorization of camping lots includes the designation of physical space for the placement of camping materials, including RVs, automobiles, and tents. It further constitutes a change in the density and intensity of the use of land. Therefore, the assertion that camping is not development, and the County's prohibition of camping in wetlands, does not raise a substantial issue with respect to conformance with the LCP.

With respect to the second claim, the LCP does describe existing recreational and other uses at Lawson's Landing, including 46 campsites and 231 trailers. However, it also requires that any development approved at Lawson's Landing consider the environmental resources of the site, including wetlands. The Dillon Beach Community Plan requires that a Master Plan be approved for any improvements or expansions at Lawson's Landing, in accordance with the LCP. Other than the reference to 46 campsites, most of the existing development in wetland areas is not described specifically in the LCP (i.e. some portion of 1000 RV camping sites). Nor is any camping in wetlands specifically authorized by the LCP. Further, as previously discussed, Marin County has pursued the Master Plan coastal development permit required by the LCP in part because of the difficulty in determining the legality of existing uses at Lawson's' Landing. In discussing this history, County staff summarize:

The first recreational trailers were brought to the site in the 1950's, and it was not until 1967 when the first effort to bring the campground use and trailers into compliance with the County's land use and zoning regulations was made. Over the next three decades, recreational uses of the property gradually increased, and the property owners filed a number of Use Permit and Master Plan applications in response to the County's efforts to assert increasing regulatory control over the site. Due to the difficulty in determining the legal status of existing land uses, the County has proceeded with a regulatory strategy to secure a comprehensive Master Plan for all of the uses on the site in order to bring the entire operation, both potentially illegal and legal non-conforming uses, up to contemporary standards for a campground rather than pursue an enforcement action that could potentially lead to a long, protracted legal battle with uncertain outcomes.¹⁹

¹⁹ Marin County Staff Recommendation on Lawson's Landing, October 14, 2008, p.1.

Given the uncertainty over the legality of existing development at Lawson's Landing, and in light of the clear requirement that development at Lawson's Landing be permitted consistent with the resource protection requirements of the LCP, the County's prohibition of camping in wetland areas does not raise a substantial issue.

Finally, with respect to the assertion that camping at Lawson's Landing is resource-dependent, the County has concluded that no non resource-dependent development (i.e. camping) will occur within designated wetlands.²⁰ Further, in order to be resource-dependent, a use must require a location in a wetland in order to function (such as wetland restoration). No evidence is apparent in the record currently before the Commission that the substantial RV and other camping activities taking place at Lawson's Landing must take place in wetland areas in order to function. Thus, the County's prohibition of camping in wetlands does not raise a substantial issue with respect to the assertion that camping is resource-dependent.

5.2.2. Coastal Dunes and Other Land Sensitive Habitats

Applicable Policies:

Marin County certified Land Use Plan Unit II Natural Resources Policies:

...

5. Coastal Dunes and other Sensitive Land Habitats. *Development in or adjacent to sensitive habitats shall be subject to the following standards:*
 - a. Coastal Dunes. *No development shall be permitted in coastal dunes in order to preserve dune formations, vegetation, and wildlife habitats. If additional development is proposed at Lawson's Landing, it shall be sited out of the dunes and designated to minimize impacts on adjacent dune vegetation and habitat. Overuse of the dune area shall be prevented by such mechanisms as restricting parking, directing pedestrian traffic to areas capable of sustaining increased use, and fencing. No motor vehicles shall be permitted in beach or dune areas except for emergency purposes. The existing sand quarry operation shall be reviewed in February 1982 when the current permit expires for conformance with LCP policies.*
 - b. Other Environmentally Sensitive Habitats. *Other sensitive habitats include habitats of rare or endangered species and unique plant communities. Development in such areas may only be permitted when it depends upon the resource of the habitat area. Development adjacent to such areas shall be set back a sufficient distance to minimize impacts on the habitat area. Public access to sensitive habitat areas, including the timing, intensity, and location of such access, shall be controlled to minimize disturbance to wildlife. Fences, roads,*

²⁰ See Note 12, above. It is unclear whether the County intended this finding to apply to its authorization of grazing within wetland areas.

and structures which significantly inhibit wildlife movement, especially access to water, shall be avoided.

Discussion

Camping permitted in Area 3 is adjacent to an area delineated as central dune scrub by Monk and Associates (see Exhibit 2). Some of this camping is in the certified LCP jurisdiction of Marin County. Although the EIR discusses central dune scrub as a sensitive habitat identified by the California Department of Fish and Game, a determination was not made as to whether this is sensitive land habitat as required by LUP Natural Resources Policy 5 or whether appropriate setbacks have been determined or required. This raises a substantial issue of conformance with this LUP policy. Additionally, EIR mitigations, which are incorporated as special conditions into the CP approval, allow trails to be developed within the foredunes, albeit subject to mitigations for potential impacts and requirements for public education, signage, and fencing, to further protect the dunes (See Exhibit 3, condition 32(E)).

In terms of habitats for rare and endangered species, special conditions allow disturbance to California Red Legged Frog and habitat for special status invertebrates, in consultation with the U.S. FWS, if it cannot be avoided. Therefore, the appeal of the County's approval raises a substantial issue of conformance with LUP Unit II Natural Resources Policy 5(b), which requires all environmentally sensitive habitats to be avoided.

5.2.3. Public Services

Applicable Policies

Marin County certified Land Use Plan Unit II Public Services Policies:

1. General policy. Prior to the issuance of a coastal development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public services and resources (i.e. water supply, sewage disposal, and road access and capacity) are available to serve the proposed development. Lack of available services or resources shall be grounds for denial of the project or for a reduction in the density otherwise indicated in the land use plan...

3. Sewage disposal.

a. On-site sewage disposal. All on-site sewage disposal systems in the coastal zone shall be evaluated as follows:...

(2) Expansions or alterations. Where a coastal development permit is necessary for an enlargement or change in the type or intensity of use of an existing structure, the existing or enlarged septic system must meet the Minimum Guidelines of the Regional Water Quality Control Board, or the County's revised septic system code as approved by the Regional Board, before a permit for such enlargement or change can be granted...

(4) Alternative systems. The County recommends that provisions be included in the County code to allow alternative sewage disposal systems to be utilized. Until such provisions are incorporated into the code and approved by the Regional Water

Quality Control Board however, alternative systems shall only be permitted where a public entity has formally assumed responsibility for inspecting, monitoring, and enforcing the maintenance of the systems in accordance with criteria adopted by the Regional Board...

e. Dillon Beach/Oceana Marina/Lawson's Landing... The methods of sewage disposal at Lawson's Landing have caused problems in the past. As part of any expansion or redevelopment plan for the area, improvements in sewage disposal facilities shall be required, in accordance with the recommendations of the Regional Water Quality Control Board.

LUP Unit II Public Services Policy 1 requires that the County make the finding that adequate public services are available to serve approved development, and lack of services shall be grounds for denial or reduction in density. The County made a positive finding to this effect (See Exhibit 3, Section VI(H) of County findings exhibit 2), however special conditions of approval do not ensure that public services will be available, raising a substantial issue of conformance with Public Services Policy 1. For example, condition no. 7(C)(10) requires the applicants to submit evidence demonstrating the feasibility of the upland sewage disposal site. However, in order to make a finding of conformance with Policy 1, feasibility needs to be demonstrated prior to Coastal Permit approval. In addition, LUP Public Services Policy 3 states that methods of sewage disposal at Lawson's Landing have caused problems, and any expansion or redevelopment plan shall require improvements to sewage disposal facilities in accordance with recommendations of the Regional Board. Conditions of approval do not require the precise development plan (PDP) application for the new sewage disposal system to be submitted for up to three years, so the system may not be constructed for many years. In the meantime, it is unclear how the development would be served by adequate public services and if the substandard septic systems will continue to operate and potentially pollute groundwater and the waters of Tomales Bay. Therefore, appeals of the County approval raise a substantial issue of conformance with LUP Unit II Public Services Policies 1 and 3.

5.2.4. Recreation and Visitor Serving Policies

Applicable Policies

Marin County certified Land Use Plan Unit II Recreation and Visitor-Serving Policies:

1. General Policy. The County of Marin supports and encourages the enhancement of public recreational opportunities and the development of visitor-serving facilities in its coastal zone. Such development must, however, be undertaken in a manner which preserves the unique qualities of Marin's coast and which is consistent with the protection of natural resources and agriculture. Generally, recreational uses shall be low-intensity, such as hiking, camping, and fishing, in keeping with the character of existing uses in the coastal zone. New visitor-serving commercial development shall be compatible in style, scale, and character with that of the community in which it is located and shall be sited and designed to minimize impacts on the environment and other uses in the area. The County encourages that a diversity of recreational opportunities and facilities be provided, especially those of moderate cost. Facilities

for water-oriented recreational uses, such as clamming and boating, are preferred to those which do not require a coastal location.

3. Private recreational and visitor serving development...

g. Dillon Beach. Lawson's Dillon Beach Resort, located immediately south of old Dillon Beach, and Lawson's Landing, located on Sand Point, shall be retained as public recreational areas. Both facilities have the potential for expanded visitor-serving development, although providing for adequate water supply and sewage disposal may be problematical...

...(2) Lawson's Landing is an appropriate site for limited expansion of boating facilities and overnight accommodations. Any such expansion shall be based on thorough planning studies which identify the environmental resources and constraints of the site, including wildlife, vegetation, and archaeological resources, geologic and wave hazards, and public service constraints. Measures to protect the site's resources, particularly sand dunes and dune tansy vegetation, shall be in any development plan. Any such plan shall also include improvements in sewage disposal facilities, in accordance with the recommendations of the Regional Water Quality Control Board. Existing A-60 zoning on A.P. #100-100-48 shall be changed to RCR in the Sand Point area and to a resource protection and/or agricultural zone on the remainder of the parcel. A.P. #100-100-49, the beach front recreational parcel, as well as all parcel zoned A-2 which constitute campground sites, shall be rezoned to RCR to reflect historic and present land use. [emphasis added]

Dillon Beach Community Plan Policies:

Objective CD-13

To encourage the continuance of visitor-serving recreational activities at Lawson's Landing, and to encourage improvements to existing facilities to be in a manner that recognizes the significant environmental hazards of the area and that protects and enhances the environmental sensitivity and outstanding visual quality of the site.

Policy CD-13.1

Coastal resort. Lawson's Landing shall be maintained as a coastal resort and commercial recreation area for the enjoyment of the rich estuarine, marine, and coastal resources in the area.

Policy CD-13.2

Master Plan. A Master Plan shall be required for any expansion or improvements to Lawson's Landing. Such Master Plan shall be in accordance with the goals, objectives,

and policies of this Community Plan, Marin Countywide Plan and Zoning Code, and Local Coastal Plan.

Policy CD-13.3

Marine resources. Expansion of or improvements to Lawson's Landing shall not endanger the resources of Tomales Bay, Bodega Bay, or the Gulf of the Farallones National Marine Sanctuary.

Policy CD-13.4

Appropriate commercial uses. Small-scale, coastal, visitor-serving commercial uses, such as a grocery store or snack bar, and tackle and bait shop, are appropriate uses in the center of existing development at Sand Point and near the pier.

Policy CD-13.5

Sewage treatment. Expansion and improvements to Lawson's Landing shall be subject to confirmation of adequate sewage treatment and disposal by the Regional Water Quality Control Board and County Health Department.

Policy CD-13.6

Development review. Master plans and coastal permits for development at Lawson's Landing shall be evaluated according to the following criteria:

- a. demonstrated availability of water, in accordance with Policy CF-8.5;*
- b. availability of safe and environmentally-sound sewage treatment and disposal;*
- c. degree of environmental impact;*
- d. traffic and parking impacts on the community, including along Dillon Beach Road, Beach Drive, Cliff Drive, and entrance to Lawson's Landing; and*
- e. visual character as seen from public areas, the Village, and Oceana Marin.*

Policy CD-13.7

Dune areas. In order to protect fragile dune areas, vehicles, including recreational vehicles, shall be restricted to areas immediately adjacent to roadways.

Policy CD-13.8

Views. Wherever possible, roads and trailers should be sited in a way that preserves views of the surrounding landscape from trailers and along roads.

Policy CD-13.9

Center of development. New structures in the center of the trailer development at Sand Point may be one- and one-half stories tall to mark the center of the development and to provide opportunities for elevated observation.

Policy CD-13.10

Tidelands. In conformance with the Local Coastal Program, tidelands used by the public for digging clams shall remain easily accessible to the public for such use.

Public access. In conjunction with Master Plan approval, provision for public access to the shoreline shall be secured in perpetuity. Public parking for the access shall also be maintained in perpetuity.

Objective CD-14

To accurately assess resident and visitor occupancy patterns in Dillon Beach.

Policy CD-14.1

Population estimates. When potentially large development projects, including new community facilities, are proposed, a baseline study of current resident and visitor occupancy patterns throughout the community should be conducted. Population estimates should be based on the following factors:

- a. number of homes constructed,*
- b. number of vacant lots,*
- c. number of homes occupied full time and number of occupants,*
- d. frequency and duration with which other homes are occupied, and number of occupants,*
- e. number of trailers at Lawson's Dillon Beach Resort,*
- f. frequency and duration with which trailers are occupied and number of occupants,*
- g. number of trailers at Lawson's Landing,*
- h. number of trailers occupied full time and number of occupants,*
- i. frequency and duration with which other trailers are occupied and number of occupants,*
- j. frequency and duration with which campgrounds at Lawson's Landing are used and number of occupants,*
- k. number of day visitors and cars at beach in Lawson's Dillon Beach Resort, and*
- l. number of day visitors and cars at Lawson's Landing.*

Seasonal/occasional use and visitor information should be collected at least for each season, and should distinguish between holiday weekend, non-holiday weekend, and midweek (Tuesday, Wednesday, Thursday) patterns. A questionnaire mailed at three month intervals during a year (that is seasonally) to all property owners and the operators of the trailers and beach at Lawson's Dillon Beach Resort and facilities at Lawson's Landing would yield more accurate information than a one-time survey. A survey conducted at five-year intervals would show changing use patterns and trends toward more full-time occupancy. Data reported by planning subarea would provide essential information for designing community facilities. Additional information could also be collected regarding travel patterns and water use.

Discussion

LUP Unit II Recreation and Visitor Serving Policy 1 states that public recreational and visitor serving development should be encouraged, but must be undertaken in a manner which is consistent with the protection of natural resources. In addition, Policy 3(g), which is specific to Lawson's Landing, states that any expansion shall take into account environmental constraints and include measures to protect natural resources, and shall include improvements in sewage disposal facilities. Similarly, the Dillon Beach Community Plan states that Lawson's Landing should be maintained as a coastal visitor-serving area, but that a Master Plan should be approved in accordance with the LCP; and further, that the resources of Tomales and Bodega Bays be protected, as well as that development address other coastal resource constraints (see above).

As described above, the appeals of the County approval relating to development within and adjacent to wetlands and dunes raise a substantial issue as to whether these resources are adequately protected with buffer areas, as required by the LCP. Substantial issues are also raised with respect to the protection of sensitive habitat, and water quality as it relates to the treatment of wastewater. Therefore, the appeals of the County approval raise a substantial issue of conformance with the LUP Unit II Recreation and Visitor Serving Policies 1 and 3.

5.2.5. "Residential" Travel Trailers inconsistent with C-RCR zoning

Applicable Policies:

Marin County Certified Zoning Regulations for C-RCR Coastal, Resort and Commercial Recreation District:

Section 22.57.151 Purpose:

The purpose of this district is to create and protect areas within the coastal zone for resort and visitor serving facilities. Emphasis is placed on public access to recreational areas within and adjacent to proposed development.

Section 22.57.152 Principal Permitted Uses

The following uses are permitted in all C-RCR districts, subject to Master Plan approval:

1. All uses and normal accessory uses, which the Planning Commission finds are appropriate for a resort area or which are desirable or necessary for public service, utility service or for the servicing of the recreation industry. Residential, industrial, institutional, general commercial uses, mobile home parks, and floating home marinas are not permitted...

Discussion:

The Coastal, Resort, and Commercial Recreation District (C-RCR) of the certified zoning code prohibits residential uses, including mobile home parks. There are approximately 233 existing unpermitted travel trailers on the Lawson's Property that appear to be permanent (e.g. many are not mobile and have decks, gardens, etc), privately owned, and residential in nature, at the least serving as vacation homes for their owners and at the most, serving as permanent residents for some owners. Most of these are located in the Coastal Commission's retained permitting jurisdiction, although it is unclear from the County's approval how many trailers would be located in the Commission's and County's respective permitting areas. Regardless, the travel trailer area appears to be more akin to a mobile home park rather than a short term visitor serving RV park. In recognition of this, the County approval requires 90 day stay limitations for trailer owners and requires that the applicants submit a precise development plan to convert the trailers to visitor serving uses. However, by allowing owners to stay 90 days per year, the trailers could be used residentially for most of the summer visitor season (e.g. memorial day to labor day) by their owners, relegating visitor use of the trailer area to less popular times of the year, raising a substantial issue of conformance with the purpose of the certified C-RCR zoning district, which is to create and protect areas within the coastal zone for visitor serving facilities.

In addition, some residential trailers are excluded from the stay limitation under the County's approval, leaving 40 residential trailers with potentially no stay restrictions. The total number and status of these trailers, as well as their location vis-à-vis the County's LCP jurisdiction, is unclear, but it includes permanent homes occupied by the owners, their families, and their employees, "permanent trailers" apparently occupied on a fulltime basis by current employees, and other trailers (the number is unclear) occupied by former employees or by members of the local workforce. In addition, trailers and mobile homes occupied by employees engaged in agricultural use of the property are permitted for 3 more years.

Further, the wording of the County condition 13 is unclear in its intent, and appears to state that the required precise development plan would impose stay limitations on "non-residential trailers" only and there are no stipulated deadlines. Condition No. 13(A) requires that a 60-day occupancy restriction pursuant to condition 20 would be required in the event that no plan for short-term visitor serving occupancies is approved, however there are no deadlines provided for such approval-only that a plan be submitted to the County. The C-RCR zoning district requires recreational uses only and prohibits residences. Therefore, the appeals of the County approval raise a substantial issue of conformance with Sections 22.57.151 and 22.57.152 (Regulations for the C-RCR district) of the certified zoning code.

5.2.6. "Residential" Travel Trailers approval inconsistent with Coastal Act and LCP Public Access and Recreational Visitor-serving policies

Applicable Policies

Section 30210

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

Section 30214

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

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

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

(also, see above, 5.2.5)

Discussion:

In contrast to the claims evaluated in 4.2.5 above, Appellant *Alliance of Permanent Trailers* claims that conditions 13 and 20 of the County's approval inappropriately restrict existing trailer uses and are thus inconsistent with the Coastal Act's mandate to protect public access and recreation; and with the LCP's policies to protect visitor-serving uses at Lawson's Landing, because the LCP, including the Dillon Beach Community Plan, acknowledged that the existing trailer uses were recreational uses at the time of LCP certification. Appellants also claim that the restrictions on the travel trailers are inconsistent with the Coastal Act 30210 and 30214 policies to balance public access with private property interests, and that they lack the required nexus, constitute a takings of private property, and are barred by the doctrine of laches (Exhibit 8).

Appellants correctly note LCP references to various recreational land uses and activities at Lawson's Landing at the time of LCP certification and of the incorporation of the Dillon Beach Community Plan into the LCP. This includes reference to 46 campsites and 231 trailer sites in both the text and in Table 4 of the LCP, which summarizes "Overnight Accommodations in the Unit II Coastal Zone." However, as previously discussed, the legality of the trailer uses on the property also is not resolved. The County has pursued a Master Plan, as required by the LCP, to bring illegal and legal non-conforming uses into compliance with the LCP. The Coastal Commission has approved an Enforcement order premised in part on the lack of required coastal development permits for the trailers, and no vested rights have been determined for such. At this time, it is unclear whether the LCP references to trailers at Lawson's Landing are relevant to the County's decision to place various overnight restrictions on the trailers; however, to the extent that such restrictions may conflict with references to trailer sites at Lawson's Landing and to the extent that the trailers are indeed recreational in nature and have not evolved into more permanent residential uses that may not have been anticipated by the LCP when it was originally certified, a substantial issue is raised.

With respect to claims of consistency with Coastal Act sections 30210 and 30214, appellants argue that the overnight stay limitations adopted by the County conflict with the private property interests of individuals in their trailers and associated appurtenances. For purposes of this review, the Commission assumes that the trailer land uses proposed have not yet received coastal development permits, and therefore that the County's action must be considered as if the trailers are being authorized for the first time under the requirements of the LCP. From this standpoint, conditions imposed by the County intended to implement the purpose of the underlying C-RCR zoning may be appropriate, but as discussed above, raise a substantial issue. At the same time, it is clear the County approval assumes that the existing situation, which includes the presence of highly personalized privately-owned travel trailers, would be the foundation for prescribing future certain visitor-serving uses at Lawson's Landing. Given this fact, it is not clear whether the approval will provide for the best balance between public access and recreation and the consideration of private property interests. Thus, a substantial issue is raised.

Finally, with respect to claims regarding adequate nexus and the laches, neither of these are standards of review for under the LCP or the public access and recreation policies of the Coastal Act for purposes of appeal pursuant to Coastal Act 30603.

6. NEXT STEPS: INFORMATION NEEDED FOR *DE NOVO* REVIEW OF APPLICATION

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* portion of the appeal hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP or the Chapter 3 policies of the Coastal Act.

Following is a discussion of information needed to evaluate the development.²¹

- a. Evidence demonstrating as of February 1, 1973, the effective date of the predecessor Coastal Act, that:
 - i. Any campground use had been legally established consistent with all necessary government authorizations;
 - ii. Grazing had been legally established consistent with all necessary government authorizations; and
 - iii. Residential trailers had been legally established consistent with all necessary government authorizations

²¹ The Commission notes that to date the Commission has not received the local record from the County. While it is possible that the local record may contain evidence that goes to issues raised by the County's approval, there may be additional informational items that the Commission will need to request from the applicant in the future.