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STAFF REPORT CDP APPLICATION

Application Number: 2-20-0018

Applicant: Dillon Beach Resort, LLC

Project Location: Dillon Beach Resort (including the Dillon Beach parking lot and adjacent sandy beach, and the dune complex and Dillon Creek below the resort) along Beach Avenue and Cliff Street fronting the Pacific Ocean in the unincorporated community of Dillon Beach in western Marin County

Project Description: Redevelopment of an existing recreational vehicle (RV) park, management activities associated with a beach fronting parking lot and adjacent sandy beach, and habitat restoration, including: 1) placement of 12 after-the-fact (ATF) and 13 new park-model RVs and associated development, installation of septic improvements to serve the RV park, demolition of an existing bathhouse, and ATF replacement of the septic system for three existing rental cottages; 2) a new parking fee program and sand/beach management activities at and fronting the beach parking lot; 3) installation of fencing on the east side of Cliff Street opposite the parking lot; and 4) restoration of dune areas (both seaward of the parking lot and inland of Cliff Street) and Dillon Creek.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is located throughout the Applicant's properties in the unincorporated Dillon Beach community of western Marin County at and near the beach

and fronting the Pacific Ocean. These properties include the RV park and cottage rental facilities located at 1 Beach Avenue (more commonly referred to as the “Dillon Beach Resort”), the beach parking lot and adjacent sandy beach below the Resort (at 2 Cliff Street), and an inland dune area east of Cliff Street and below the Resort, including a portion of Dillon Creek. The Dillon Beach Resort is located on the main public road extending into the Dillon Beach community, and the beach-fronting and roughly 265-space parking lot provides fee-based parking for convenient access to Dillon Beach.

Historically, both the Applicant and the previous property owners initiated development without a coastal development permit (CDP) at the subject properties, including: removing sand from the beach parking lot and placing it into Dillon Creek, on the beach, and in the adjacent dunes, as well as trucking it off-site; operating heavy equipment on the beach; raising fees for beach parking; installing a well in or adjacent to sensitive habitat; operating vehicles within the dunes inland of Cliff Street; replacing a septic system to serve the existing cottages; creating and charging for parking in an overflow parking lot; and installing 12 park-model recreational vehicles (“RVs”) and associated development. The Applicant is proposing to address all of these unpermitted activities, as well as some new proposed development, through this CDP application. In short, the application is intended to resolve all of these issues and to allow the Applicant to proceed with the development and management of their property, and accommodate coastal visitors to Dillon Beach, with a clean slate moving forward.

First, the Applicant proposes to redevelop the RV park portion of the Resort, including through the 12 ATF park model RVs as well as adding 13 more, septic improvements, and associated development. Such redevelopment would transition the RV park from a business model that allowed long-term rental of 25 RV parking spaces (akin to standard residential use) to one that provides 25 park-model RVs for nightly rental with a maximum stay of 14 nights at any one time (i.e., a more traditional visitor-serving operation), where the existing three cottages would also continue to be available to the public for overnight use in the same way (i.e., thus a total of 28 overnight units). The proposed nightly fees would vary based on the season (summer/winter), time of season (high/low), and type of accommodation, but overall staff has concluded that there would be 6 low-cost units, 14 high-cost units, while the remaining 8 units would be priced in between. To ensure that lower-cost opportunities are both provided and protected, the Applicant has proposed a rate structure to ensure that the 6 units remain lower cost in perpetuity, and to provide new free public amenities (including a bike rack at the beach parking lot and an improved pedestrian accessway to access the beach when the lot is closed).

Second, with respect to the beach and the beach parking lot, the Applicant manages and maintains the roughly 265-space lot and also provides free access to a restroom, picnic tables and fire rings, as well as provides trash services and maintenance for the public beach more generally. The Applicant asserts that beach parking fees are a critical element to helping to cover the ongoing maintenance costs of these facilities, and staff very much recognizes that the service provided here is akin to a municipal service absent municipal funds. Toward that end, staff and the Applicant discussed a range of potential fee options that could address that Applicant need while also

recognizing that the parking lot represents the overwhelming majority of available parking in Dillon Beach, and there are simply not available parking alternatives for visitors of any type. As a result, this parking lot has an oversized effect on who can access Dillon Beach at all, and it is important that fees are structured in a manner that will not significantly adversely affect public access, especially for those visitors least available to afford fees. Ultimately, staff and the Applicant found what appears to be an appropriate middle ground, wherein parking would be free during sunrise (from gate opening to 9am year-round) and sunset hours (after 3pm during winter and after 6pm during summer), \$10 between 9am and sunset hours except during that time on summer weekends (i.e., the Saturday of Memorial Day to the Sunday of Labor Day weekend, inclusive) when it would be \$15, and free access for bikes and pedestrians. In addition, that collaboration led to an agreement that an annual pass could be purchased by anyone for \$160, and that free parking would be provided to any visitor with a valid State Parks California Golden Bear Pass, a Marin County Parks Library pass (i.e., free parking passes that can be checked out at County libraries), or a Sonoma County Park Vehicle Entry Pass, all to help address the needs of lower income users. In addition, 10 free ADA parking spaces would be provided, and free parking would also be provided to anyone with a valid ADA placard/vehicle plates, helping to make Dillon Beach more accessible for those with disabilities. Staff believes that this represents an appropriate balancing of the public's interest in Dillon Beach access.

Third, many community concerns have been raised that the beach parking operation has created significant traffic impacts, both for residents and visitors to the area. These concerns are exacerbated by the fact that Dillon Beach is accessed via a single public road (Dillon Beach Road), and back-ups of queuing vehicles waiting to gain access to the beach parking lot can extend some 1.5 miles inland. Even worse, on particularly popular beach days, these queuing vehicles make it all the way to the parking lot only to be turned away because the lot is full. As such, it is essential for the Applicant to implement traffic management measures and work with the community on solutions to maintain overall access, especially during peak usage periods. Thus, staff recommends that the Applicant provide a fair share contribution to Marin County, or the appropriate designated entity, towards the erection of an electronic traffic sign in Tomales to display road conditions, parking availability and emergency message information; and develop and implement a Traffic Management Plan moving forward, working with the community and Marin County to develop adaptation measures to improve circulation (e.g., modified payment systems, additional traffic alert systems, etc.).

Fourth, additional concerns have been raised that the 25 new park-model RV units and related development would both block and otherwise degrade public shoreline views due to their size and orientation along Beach Avenue (i.e., they would be located on the blufftop seaward of Beach Avenue and thus, directly block views for visitors arriving along that street to the shoreline and ocean). However, these impacts need to first be understood in terms of the existing level of view degradation from existing RVs and related development at the Resort and not in terms of all impacts per se. Here, while some of the units would be about a foot higher than the prior units, they also include a more uniform design (with natural colors, pitched roofs and articulation features), which, when coupled with removal of other structures, would create a slightly less visually

intrusive appearance than would the strictly flat-styled roof, and varied designs, of the previous RVs. Indeed, before and after photos of the proposed project area show similar views to the ocean and shoreline from the public road (except for potential view blockage due to proposed new fencing in between the rows of RVs, which staff is recommending be modified to provide for and protect views).

Finally, the project includes a new sand management program that would place sand accumulating in the parking lot back on the beach in a manner that is both the least disruptive to sensitive resources and can provide for additional benefits through restoration and protection of the dune fronting the parking lot. In addition, dune and creek restoration would occur below the Resort and inland of Cliff Street to help address historical impacts to these sensitive habitats due to past activities.

Overall, the proposed project, as conditioned, would provide visitor-serving accommodations to serve a range of users and allow for maintenance of beach facilities in a manner that is protective of coastal resources and public access. The Applicant would also restore habitat and provide public benefits to mitigate for previously conducted unpermitted development and associated impacts. The Applicant has indicated that it is largely in agreement with the staff recommendation. Thus, staff recommends approval of the CDP as conditioned. The motion to implement staff's recommendation is found on page 6 below.

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EXHIBITS

- Exhibit 1: Project Location
- Exhibit 2: Project Area Photos
- Exhibit 3: Proposed Project Plans
- Exhibit 4: Proposed Rental Fee Structure
- Exhibit 5: Proposed Beach Parking Fee Program
- Exhibit 6: Sand Management Plan
- Exhibit 7: Inland Habitat Impacts
- Exhibit 8: Off-site Sand Trucking
- Exhibit 9: Habitat Restoration Areas
- Exhibit 10: Letter from Cal Water
- Exhibit 11: Before and After Photos of the Project Site

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a CDP for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number 2-20-0018 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 2-20-0018 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the Permit 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.*

2. STANDARD CONDITIONS

This permit is granted subject to the following 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 Applicant 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. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. 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.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall be in substantial conformance with the proposed plans (titled *Civic Knit, Exhibit F-Proposed RV Park Layout* dated December 16, 2019; *Civic Knit, RV Plans Units A-E* dated December 2, 2019; *Questa Engineering Corp., Septic System Upgrade Dillon Beach Resort RV Park* dated March 27, 2020; *Questa Engineering Corp., Dillon Beach Resort Rental Cabins Septic System Repair Plans and Details* dated June 3, 2019; *Civic Knit, Recent Fence Work* dated October 5, 2020; *Civic Knit Dillon Beach Refuse Management Revised Site Plan* dated August 26, 2019; and *Civic Knit Dillon Beach Refuse Management Signage and Receptacles* dated 28, 2019 (see **Exhibit 3**)), except that they shall be modified to meet the following requirements:

 - (a) RV Site Plan.** The final location and type (i.e., all details on size, materials, styles, etc.) of all park-model RV units and associated development shall be clearly identified within the designated RV spaces on the Revised Final Plans.
 - (b) Resort Fencing.** Fencing in public views shall be limited as much as possible, and allowed fencing shall be limited to that necessary for public safety and required user-area separation, where such fencing shall be as visually permeable and as low as possible. Any allowed separation fencing shall be no taller than 30 inches from grade and shall be constructed of natural materials with an open design (e.g., cedar split rail). All fencing locations, specifications, and supporting documentation for its need shall be provided, and any fencing not explicitly approved shall be removed.
 - (c) Habitat Protection Fencing.** Revised Final Plans must indicate the location and type of all fencing proposed to retain sand and protect habitat on the beach and inland of Cliff Street pursuant to the requirements of **Special Condition 3** (Sand Management Plan) and **Special Condition 4** (Habitat Restoration Plan).
 - (d) Cottage Septic System Modifications.** The piping and leach fields associated with the cottage septic system shall be removed and the affected area restored consistent with the requirements of **Special Condition 4**. Wastewater disposal shall be provided in the new location shown on **Exhibit 3** consistent with all other CDP requirements.
 - (e) Public Access Improvements.** A new bike rack, an additional dog mitt station, an improved pedestrian accessway between the west side of Cliff Street and the sandy beach entrance shall be provided at the beach parking lot to provide for access to the beach when the beach parking lot is closed (e.g., sidewalk, graded trail, cross-walk, etc.), and improvements to the sidewalk on the east side of Cliff Street leading from the Resort to the main entrance of the beach parking lot (e.g.

clearing of overgrown vegetation) shall be included. Plans shall specify all details associated with such development, including all associated signs, which shall be sited and designed to maximize public utility and minimize visual impacts as much as possible. All such development shall be constructed/installed within one year of CDP issuance, and shall be repaired and maintained in their approved and required state.

(f) Beach Maintenance. The location of designated beach clean-up and maintenance activities, including the designated pathway for ongoing use of a motorized all-terrain vehicle for beach cleanup subject to the limitations in **Special Condition 3(b)**, and installation of trash cans and signage regarding parking, safety, and trash management shall be identified and provided.

(g) Electrical Vehicle Parking. An electrical vehicle charging station shall be provided on the east side of the Dillon Beach Store and Café for public use.

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Project Plans. Minor adjustments to the above requirements, as well as to the Executive Director-approved Revised Project Plans, which do not require a CDP amendment or a new CDP (as determined by the Executive Director), may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

2. Beach Parking Lot Fee Schedule. Vehicle parking fees may be charged at the beach parking lot provided they are no more than as follows:

- **Sunrise/Sunset Arrival:** Vehicles arriving during sunrise hours (from gate opening to 9am year-round) and sunset hours (after 3pm during winter and after 6pm during summer (i.e., the Saturday of Memorial Day to the Sunday of Labor Day weekend, inclusive)), shall park for free.
- **Regular Day Fee:** For vehicles arriving at any time other than the sunrise/sunset arrival times (see above), the fee shall be \$10 per vehicle per day other than during that time on summer weekends (i.e., the Saturday of Memorial Day to the Sunday of Labor Day weekend, inclusive) when it would be \$15. For motorcycles, the fee during such times is always \$5.
- **Vehicle-type Fee:** Notwithstanding the above early/late arrival free options and regular day fees, fees are \$20 per RV per day and \$30 per bus per day at all times.
- **Annual Fee:** Annual fees shall be no more than \$160 per vehicle per year.
- **Free Parking:** Parking shall be provided for free for anyone with a valid California State Parks Golden Bear Pass, Marin County Parks Library Pass, or Sonoma County Parks Vehicle Entry Pass.

- **ADA Parking:** 10 ADA parking spaces shall be provided, and free parking shall be provided to those with an ADA placard/ADA plates.
- **Other:** Visitors arriving on foot or by bike shall be allowed to access and use the beach parking lot and all related facilities for free.

The Permittee shall advertise the above beach parking lot fee schedule, including the free parking options, online (i.e., on all Dillon Beach Resort related websites) and on-site at the Dillon Beach Store and Café, Dillon Beach Resort, and at the beach parking lot, and shall provide a description of all such measures for Executive Director review and approval.

- 3. Revised Final Sand Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two sets of a Revised Final Sand Management Plan to the Executive Director for review and written approval. The Plan shall clearly describe the manner by which sand that collects in the beach parking lot is to be relocated back onto Dillon Beach, or in another area designated herein, and the manner by which sand is to be kept on the beach, including through use of sand fencing and dune vegetation restoration. The Revised Final Sand Management Plan shall be in substantial conformance with the *WRA Environmental Consultants, Dillon Beach Resort- Revised Parking Lot Maintenance Recommendations and Best Management Practices, Dillon Beach, California* dated October 2, 2020 (**Exhibit 6**), but shall be modified to provide and be consistent with all the following:

- (a) Sand Relocation Frequency.** Sand relocation activities shall occur no more than once weekly between June 1st and September 30th, and no more than once monthly between October 1st and May 31st. The only exception to this schedule would involve sand relocation into the disturbed area adjacent to the northern end of the parking lot identified as “Area 4” on Figure 2 of the WRA report (see **Exhibit 6**). Area 4 may be used for sand relocation activities on an as-needed basis. Any sand relocation to this area must avoid adjacent dune vegetation, particularly along the western extent of Area 4, where dune vegetation is present.
- (b) Vehicular and Equipment Use.** Use of equipment for sand relocation within the parking lot is limited to the boundaries of the paved parking lot area. A single path must be designated for vehicular or equipment travel to and from the sandy beach area and the parking lot for sand placement activities. Use of all-terrain vehicles for the purposes of trash collection shall be limited to no more than once daily during peak season. Vehicle and equipment use on the beach shall be avoided entirely below the mean high tide line, within 25 feet of dunes, and within 100 feet of Dillon Creek for activities seaward of the parking lot boundaries, as measured from the top of the creek bank or the edge of the wet sand where there is no defined creek bank.
- (c) Sand Relocation Area.** Sand shall be placed directly above the mean high tide line, and work windows are limited to low tide conditions. Sand relocation events

shall occur in sequence from north to south, or from areas “1-3” as indicated on Figure 2, with relocation at “Area 4” permitted more frequently as described above. Relocation would occur first at Area 1, then 2, then 3, then 4, then back to Area 1. Sand may only be placed in approximately 60-foot by 200-foot sections alongshore, during the weekly relocation schedule and result in no greater than a 1-foot maximum added depth. During low season months, when sand relocation is limited to a once-monthly schedule, sand may be spread out over the entirety of placement Areas 1-3, in order to maintain no greater than a 1-foot depth. No sand relocation shall occur within the 100-foot creek buffer, as measured from the top of the creek bank or the edge of the wet sand where there is no defined creek bank, and no sand shall be relocated on top of the beach dunes shown in **Exhibit 6**.

- (d) Sand Fencing.** Sand fencing, including the placement of fencing immediately west of the dunes, is required to promote accretion and stabilization of the dunes through natural coastal processes. Fencing shall not be located on top of dunes, as indicated by a rise in elevation from the beach elevation. Revised plans shall indicate the type of sand fencing proposed, and the exact location and extent of fencing (including linear feet), where such fencing shall maximize sand retention utility as well as public view protection as much as possible.
- (e) Off-Site Sand Relocation Prohibited.** Sand removed from the beach parking lot shall not be transported to any off-site location nor any site on the Permittee’s property not otherwise authorized through this special condition.
- (f) Beach Dune Habitat Restoration Plan.** The Plan shall be integrated with the Habitat Restoration Plan (see **Special Condition 4**).
- (g) Annual Monitoring.** By December 31st of each year, the Permittee shall submit a monitoring report detailing the sand removal and relocation activities conducted throughout the year. The report shall provide adequate information to evaluate compliance with this special condition, including the dates when sand was moved from the parking lot and relocated onto the beach, the approximate volume of sand moved, the locations of sand placement, and the placement amounts and depth at each location.

All requirements above and all requirements of the approved Revised Final Sand Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Final Sand Management Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Revised Final Sand Management Plan, which do not require a CDP amendment or a new CDP, may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 4. Habitat Restoration Plan.** WITHIN ONE YEAR OF CDP APPROVAL, which may be extended by the Executive Director by up to no more than one year for good

cause, the Permittee shall submit a final Habitat Restoration Plan to the Executive Director for review and written approval. The goal of the Plan shall be to: 1) restore the beach dune complex located between the beach parking lot and Dillon Beach, and shown on **Exhibit 9** in green, to a self-sustaining natural beach dune habitat that effectively reduces the volume and need for maintenance of windblown sand entering into the beach parking lot while preserving public access; 2) restore approximately one acre of central dune scrub east of Cliff Street, as shown on **Exhibit 9** in purple, degraded by historical vehicle use and the installation of the cottage leachlines and piping, to a self-sustaining native central dune scrub habitat; and 3) restore approximately 0.4 acres of Dillon Creek east of Cliff Street to a self-sustaining native riparian habitat as shown in **Exhibit 9** in yellow. The Plan shall be prepared by a restoration ecologist and will take into account the specific conditions of the site (including soil, exposure, water flows, temperature, moisture, wind, etc.), as well as restoration and enhancement goals. At a minimum, the Plan will provide for the following:

- (a) Baseline Assessment.** A baseline assessment, including narrative, maps, and photographs, of the current physical and ecological condition of the restoration areas identified above.
- (b) Project Goals and Objectives.** A description of the specific restoration goals and objectives for each of the three habitat types, including supporting rationale based on historical conditions, relevant published information for the area, and/or appropriate reference sites.
- (c) Invasive Species Removal.** All invasive species (as listed by the California Invasive Plant Council) shall be removed, and continued removal shall occur on an as-needed basis to ensure that absolute cover not exceed 5% following initial restoration efforts, with a goal of eradication over time.
- (d) Vegetation Planting.** A detailed planting plan emphasizing the use of seeds, plugs, or container plants planted prior to fall rains, unless another time period or planting method is fully described and justified within the Plan. All vegetation planted in the restoration areas shall consist only of plants native to the target habitats and consist only of local genetic stock, and the Plan shall be submitted with adequate evidence demonstrating that that is the case. The planting plan should be based on vegetation community structure (e.g., species and relative densities) at an approved nearby reference site and shall be designed to avoid the use of irrigation following the plant establishment stage. If irrigation is considered necessary to initiate restoration, it should be temporary and provisions for its removal must be included in the Plan.
- (e) Fencing and Signage.** Fencing and informational signs shall be installed around the restoration areas to identify the restoration areas and protect them from activities that could harm the restoration. All signage and fencing details shall be provided, which shall be sited and designed to protect the restoration and to

protect public views as much as possible (e.g., materials that are made of natural materials and colors that blend with the environment, such as rope and post).

- (f) Monitoring and Maintenance.** A detailed monitoring program designed to evaluate the success of the restoration efforts, and to guide any adaptive management actions for ensuring long-term success shall be provided. Monitoring and maintenance of all restoration areas shall continue for as long as any portion of the approved development exists and shall at a minimum include:
- 1) Schedule.** An initial five-year monitoring schedule, with conditional inclusion of additional years of the same monitoring if success criteria are not met in the initial five-year time frame, until such time as they are met.
 - 2) Monitoring Methods.** The monitoring program shall be supported by a clear rationale for the selected approaches and must describe the monitoring methods that will be used in detail (e.g., metrics, sampling frequency, timing, etc.). Power analyses shall inform the design of the sampling scheme and the analytical framework to be used for assessments shall also be clearly described in the narrative.
 - 3) Success Criteria.** At a minimum, final success criteria for vegetation species diversity (including richness and evenness), native vegetative cover, non-native vegetative absolute cover less than or equal to 5%, and specific measures for any sensitive plant or wildlife species located in the restoration areas shall be provided. Criteria may be relative or fixed, may be based on reference sites or relevant literature, and shall be supported by a clear technical rationale.
 - 4) Data and Statistical Analysis.** A description of the data analysis methods and statistical thresholds employed shall be established as assessment rules for each success criterion. The statistical tests that will be used (e.g., a one or two sample t-test) to detect differences between success criteria and conditions observed at the restoration areas shall be specified.
- (g) Reporting.** Monitoring reports shall be submitted annually to the Executive Director for review and written approval by December 31st of every year for 5 years or for an adjusted time period dependent on restoration success, as required in subsection (1) above. The reports shall identify the location of all vegetation plantings or seedings conducted in the restoration areas, present monitoring results, assessment of progress toward meeting success criteria, and any adaptive management recommendations. Raw data and associated metadata shall be provided in a digital format with the reports. The reports shall also include photographs (in color hard copy 8½ x 11 and digital jpg formats) that clearly show the restoration areas from at least the same vantage points as the initial photo documentation as well as subsequent monitoring reports. Any proposed actions necessary to maintain the restoration areas shall be implemented within 30 days of Executive Director approval of the monitoring

reports, unless a different time frame for implementation is identified by the Executive Director.

All requirements above and all requirements of the approved Restoration Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Restoration Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Restoration Plan, which do not require a CDP amendment or a new CDP, may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

5. Habitat Conservation Area. No development, as defined in Coastal Act Section 30106, shall occur in the Habitat Restoration Areas identified in **Special Condition 4** (as generally shown in **Exhibit 9**) except for Sand Management Plan activities (**Special Condition 3**), Habitat Restoration Plan activities (**Special Condition 4**), and seasonal fire management of vegetation on the slope south of the RV park if required by Federal, State or County fire requirements and if approved by the Executive Director as overall providing an ecological benefit as well. WITHIN ONE YEAR OF CDP APPROVAL, which may be extended by the Executive Director by up to no more than one year for good cause, the Permittee shall execute and record a deed restriction document in a form and content acceptable to the Executive Director for the purpose of conserving the habitat restoration areas generally shown on **Exhibit 9** of the staff report. The recorded document shall include a legal description of the Permittee's entire legal parcel and an exhibit consisting of a formal metes and bounds legal description and a corresponding graphic depiction prepared by a licensed surveyor based on an onsite on the ground survey of the habitat restoration areas. The recorded document shall also reflect that development in the habitat restoration areas is restricted as set forth in this special condition. The deed restriction shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and it shall run with the land in favor of the People of the State of California, binding all successors and assignees, in perpetuity.

6. Construction Plan. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include and provide for the following:

(a) Construction Areas. The Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the fullest extent possible in order to have the least impact on coastal resources, including by using, as feasible, inland private areas for staging and storing construction equipment and materials. Special attention shall be given to siting and designing construction areas in order to minimize impacts to public views from Beach Avenue and Cliff Street, including but not limited to public views across the site.

- (b) Construction Methods.** The Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas as much as possible (including using unobtrusive temporary fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public access and public views during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as feasible, and lighting of the work area is prohibited.
- (c) Construction Timing.** Construction is prohibited during weekends, from the Saturday of Memorial Day weekend through Labor Day inclusive, and during non-daytime hours (i.e., from one-hour after sunset to one-hour before sunrise), unless due to extenuating circumstances the Executive Director authorizes such work.
- (d) Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control and water quality best management practices that will be implemented during construction to protect coastal water quality, including at a minimum all of the following:
- 1. Runoff Protection.** Silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of all construction areas to prevent construction-related runoff and sediment from discharging from the construction area entering into storm drains, or otherwise offsite or towards the beach and ocean. Similar apparatus shall be applied on the beach area for the same purpose when potential runoff is anticipated. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment, filtration, and treatment equipment. All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
 - 2. Equipment BMPs.** Equipment washing, refueling, and servicing shall take place at an appropriate off-site and inland location to help prevent leaks and spills of hazardous materials at the project site, at least 50 feet inland from the beach and preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project site.
 - 3. Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and

cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).

4. Rubber-tired Construction Vehicles. Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction. When transiting on the beach, all vehicles shall remain as far away from the ocean as possible and avoid contact with ocean waters.

5. Construction Material Storage. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from these areas by one-hour after sunset each day that work occurs, except for necessary erosion and sediment controls and construction area boundary fencing where such controls and fencing are placed as close to the approved construction area as possible and are minimized in their extent.

(e) Restoration. All construction debris shall be removed and all beach area and other public recreational access and use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be appropriately filtered as necessary to remove all construction debris.

(f) Construction Site Documents. The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, as well as the public review requirements applicable to them, prior to commencement of construction.

(g) Construction Coordinator. The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies) and that the construction coordinator's contact information (i.e., address, phone numbers, email, etc.), including, at a minimum, an email address and a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction and shall investigate complaints and take remedial

action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.

- (h) Construction Specifications.** The construction specifications and materials shall include appropriate control provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.
- (i) Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Plan, which do not require a CDP amendment or a new CDP (as determined by the Executive Director), may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

7. Traffic Management Measures.

- (a) Fair Share Contribution.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall provide a fair share contribution to Marin County, or the appropriate designated entity, towards the erection of an electronic traffic sign in Tomales to display road conditions, parking availability and emergency messages, as determined by the Executive Director in conjunction with appropriate designated entity.
- (b) Traffic Management Plan.** WITHIN SIX MONTHS OF CDP APPROVAL, which may be extended by the Executive Director by up to one year for good cause, the Permittee shall submit two copies of a Traffic Management Plan to the Executive Director for review and written approval. The Traffic Management Plan shall, at a minimum, include and provide for the following:
 - 1. Baseline Assessment.** Analysis of circulation conditions in and out of the beach parking lot, when back-ups have resulted throughout Dillon Beach, the extent of the back-ups, and a measure of the impacts to community circulation. At a minimum, the Plan shall assess specific data points including: a beach parking lot turnover study that measures parking lot capacity for a typical peak day through hourly counts; and assessing the extent (quantity and time measurements) of queuing for the beach parking lot entry on a typical peak day.
 - 2. Outreach Measures.** Community stakeholders shall be consulted on the

preparation of the Plan in order to review and weigh in on appropriate measures to address congestion and other traffic impacts. Such outreach shall at a minimum require the Permittee to consult with Marin County Department of Public Works-Transportation Division, Marin County Fire Department, Concerned Citizens of Dillon Beach, and Lawson's Landing, and the Plan shall be submitted with evidence of such consultation and steps take to address identified concerns.

- 3. Monitoring and Reporting.** Annual monitoring shall be conducted for three years, consistent with the requirements of part (1). Monitoring reports shall be submitted to the Executive Director for review and approval by December 31st of each of the three years from the date of CDP approval. Monitoring reports shall include identification of potential adaptation measures to improve circulation in and out of the beach parking lot, including during peak use times, based on the traffic and congestion issues that arise out of the data collected. The Permittee shall be required to make changes as identified in any approved monitoring report as required by the Executive Director to maintain consistency with the terms and conditions of this CDP.
- 4. Final Action Plan.** At the conclusion of the required three-year monitoring and reporting period, the final monitoring report shall designate which elements and measures of the Traffic Management Plan the Permittee will undertake over the long-term and, at a minimum, shall propose long-term beach parking lot management measures.

All requirements above and all requirements of the approved Traffic Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Traffic Management Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Traffic Management Plan, which do not require a CDP amendment or a new CDP (as determined by the Executive Director), may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 8. Resort Overnight Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
 - (a) Length of Stay Provisions.** All 28 rental units (including park model RVs and cottages) shall be open and available to the general public at all times the Resort is operating. Units shall not be rented to any individual, family, or group for more than 14 consecutive days, and unit rentals to the same individual, family, or group shall not exceed 30 days in any calendar year. No individual ownership or long-term occupancy of the units shall be allowed.
 - (b) Conversion Prohibited.** The conversion of any of the 28 units to limited-use overnight visitor accommodation units (e.g., timeshares, fractional ownership,

etc.) or to full-time occupancy residential units or to any other units with use arrangements that differ from the approved project shall be prohibited.

(c) Consistency with Approved Development. All units shall be maintained and operated as they have been proposed and approved herein (see **Exhibit 3**).

(d) Lower-cost Units. The Permittee has proposed six lower-cost units and a plan to ensure that the lower-cost units remain so over time. Specifically, the Permittee proposes to offer six units at no more than the lower cost rates as shown in **Exhibit 4** (with allowed upward adjustment according to the Consumer Price Index (CPI) not more than once annually, with notice to the Executive Director). The Permittee shall provide these units consistent with the Permittee's proposed rates.

(e) Rental of Approved Units. The park model RVs may be installed and rented upon CDP approval consistent with the terms and conditions of this CDP. Rental of all units may be required to cease if the Permittee fails to comply with the terms and conditions of this CDP, including required timeframes for submittal of materials in satisfaction of the special conditions, as determined by the Executive Director.

(f) Monitoring Report. The Permittee shall annually provide, for Executive Director review and written approval, two copies of a monitoring report for the six lower-cost units, beginning one year after CDP approval, and annually thereafter. The monitoring reports shall include, at a minimum, the average daily rate charged each month during the preceding year for the lower-cost units, the occupancy rate for each lower-cost unit for each applicable month, a description of proposed rates for the upcoming year (which shall be allowed to increase at no more than the annual Consumer Price Index each year), and an assessment of compliance with the terms and conditions of this CDP regarding the lower-cost units. The Permittee shall be required to make changes as identified in any approved monitoring report as required by the Executive Director to maintain consistency with the terms and conditions of this CDP.

9. Public Rights. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the properties involved. The Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the properties now or in the future.

10. Future Permitting. All future proposed development related to this CDP shall require a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP amendment is not legally required. In addition, a CDP amendment shall be required for any repair or maintenance identified as requiring a permit in Coastal Act Section 30610(d) and/or Title 14 of the California Code of Regulations Section 13252.

11. Other Agency Approvals. PRIOR TO CONSTRUCTION, the Permittee shall provide to the Executive Director written documentation of authorizations from all entities from which such authorization is necessary for the portion of the project being constructed including, at a minimum, Marin County, California Department of Housing and Community Development, Regional Water Quality Control Board, Greater Farallones National Marine Sanctuary, State Lands Commission, and United States Army Corps of Engineers, or evidence that no such authorizations are required from each of these entities. The Permittee shall inform the Executive Director of any changes to the project required by any other such authorizations. Any such changes shall not be incorporated into the project until the Permittee obtains a Coastal Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

12. Archaeological Resources Protection. The Permittee shall comply with the following monitoring conditions during construction:

- (a) A Tribal Cultural Monitor qualified by the Native American Heritage Commission shall be present during all ground disturbance (including grading activities) and shall be consulted to provide recommendations for subsequent measures for the protection and disposition of artifacts of significance or remains in the event such artifacts or remains are discovered. In the event that any article of significance is encountered, all activity that could damage or destroy such article must cease, and the Executive Director, the Native American Heritage Commission, and all appropriate local Tribal representatives must be notified so that the articles may be suitably protected or flagged for future research.
- (b) The Permittee shall consult with the Federated Indians of Graton Rancheria (“the Tribe”) to establish a Tribal Monitoring Agreement. A copy of this agreement, signed by the Permittee and the Tribe, shall be submitted to the Executive Director for review and written approval prior to the start of any ground-disturbing activities. Such measures shall be required to address and proportionately offset the potential impacts of the project on such Tribal resources, and the Permittee shall comply with all the conditions of the approved Tribal Monitoring Agreement.

13. Liability for Costs and Attorneys’ Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys’ fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

14. Deed Restriction. PRIOR TO ISSUANCE OF THE CDP, the Permittee 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 CDP, a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the 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 terms and conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of all of the parcels governed by this CDP. 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 CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

4. FINDINGS AND DECLARATIONS

A. Project Location and Background

The proposed project is located at the Dillon Beach Resort and its associated properties in the unincorporated Dillon Beach community of western Marin County. These properties include three main areas: 1) the RV park and cottage rentals located at 1 Beach Avenue (more commonly referred to as “Dillon Beach Resort”), 2) the Dillon Beach beach parking lot and adjacent sandy beach at 2 Cliff Street, and 3) the inland dunes below the resort and inland of Cliff Street, which includes a portion of Dillon Creek. Just east of and adjacent to Dillon Beach Resort along Beach Avenue is a café and general store, also owned by the Resort. Residential development neighbors the subject properties to the north and south, and Lawsons Landing, a low-cost visitor serving campground providing RV and tent camping, is located about a quarter mile to the south along Cliff Street.

The community of Dillon Beach is located just north of the mouth of Tomales Bay on the mainland side (with the tip of Point Reyes National Seashore forming the other side of the Bay’s mouth). Dune habitat can be found seaward of the beach parking lot as well as inland/east of Cliff Street. Dillon Creek and its associated riparian corridor runs along the southern portion of the Applicant’s property east of Cliff Street, eventually crossing under Cliff Street and spilling out onto the beach just south of the beach parking lot. The subject properties are zoned Coastal Resort Commercial Recreation (C-RCR) under the Marin Local Coastal Program (LCP), a zone whose purpose is to create and protect areas in the coastal zone for resort and visitor serving facilities. See **Exhibit 1** for the project location and **Exhibit 2** for photos of the project area.

Dillon Beach Resort

Dillon Beach Resort contains a 25-space Recreational Vehicle (RV) park, three 600-square-foot rental cottages, a communal bathhouse, caretaker unit, parking, and associated development. Wastewater treatment for the 25 RV spaces and communal

bathhouse is provided through four onsite septic systems, including four 810-gallon concrete and redwood septic tanks and four leach boxes for wastewater dispersal. The three rental cottages are served by their own onsite wastewater treatment system, which was replaced in its entirety with local permits from Marin County Environmental Health Services (EHS) in 2019 but without any CDP authorization.¹

Dillon Beach Resort, formerly known as Lawson's Dillon Beach Resort, was established in the late 1800s as a small hotel, expanding by the 1940s to include a 21-rental cottage beachside resort. By 1969, the owners demolished all but four of the cottages, replacing them with 25 pull-through RV parking spaces that were rented out monthly by individuals with RVs, though many of the same RVs remained for longer terms, amounting to stays of consecutive years.² Of the four remaining cottages, one is located on the northern side of Beach Avenue and is now used as a caretaker's unit, while the three other rental cottages adjacent to and west of the RV Park area are rented to Resort visitors. The RVs occupied by visitors that parked at the site over the years varied in size, but more recently were documented to be between 8.5 to 12 feet wide (not including pop-out walls) and 8.5 to 13 feet tall. Over the years, individual renters constructed accessory decks, stairs, and storage sheds around their RV units, all without benefit of CDPs.

Little is known about the pre-Coastal Act rental fees paid by RV owners parking at Dillon Beach Resort as the 1969 County use permit for the RV park did not specify RV rental space costs or limit the length of time that one renter could use each space. However, it is known that the monthly rental fee for the RV spaces when the property was purchased by the current Resort owners in 2018 was \$550 to \$675 per month. After

¹ At the time that County EHS was reviewing the septic repair plan for the cottages, there was no discussion on whether or not the proposed work needed a CDP (and indeed, EHS is not the County entity tasked with making those types of CDP determinations). Separately, there was also some confusion about how the LCP and CDPs apply to RV parks, including as the County Board of Supervisors had relinquished certain authority pertaining to the RV park in 1990 to the State Department of Housing and Community Development (HCD). However, the County only relinquished enforcement of the state health and safety code at the site, and the Coastal Act and LCPs still apply here (as they do to other RV parks in the coastal zone). In other words, although it is true that HCD regulates certain aspects of the Resort's operations, the Mobile Homes Park Act does not supersede state authority granted in the coastal zone through the Coastal Act, including LCP/CDP requirements.

The septic improvement included the removal of a 630-gallon-per-day capacity redwood septic tank and replacement with a larger 1,500-gallon concrete tank behind the cottages, replacement of the 4-inch pipeline from the tank to the leach field in coastal dunes and bluff, and replacement of the leach field with a new 66-foot long, 2-foot wide, and 5.5-foot deep leaching trench in the same location situated in a vegetated dune area approximately 200 feet south of the cottages. Because the work involved a full replacement and expansion of the system, as described in Questa Engineering Corps' April 16, 2019 Septic System Repair Plan, with some project elements located in sensitive dune habitat, the development requires a CDP per Coastal Commission regulations (see Title 14 CCR Sections 13252 and 13253). As a result of this assessment, the Applicant has requested after-the-fact authorization of the cottage septic replacement as part of this CDP application.

² In 1969, Marin County issued a use permit to allow the addition of 11 trailer spaces to an existing 14-space travel trailer court, for a total of 25 spaces. The original use permit did not specify the cost of the trailer rental spaces or limit the length of time that one renter could use each space.

purchase, the current owners raised the rent until it was \$1,700 per month to rent one space. All owner-occupied RVs have since vacated Dillon Beach Resort. In January of 2019, Commission staff was informed that the Applicant had brought in 12 park model units and constructed associated development, including fencing and pavers, within a subset of the vacated RV parking spaces and started to rent them out, all without CDP authorization,³ and the Commission opened violation number V-2-19-0016 at that time (see also violation finding). Further, at the time, it appeared that the Applicant intended to add up to 13 additional units to replace all owner-occupied RV units once spaces were vacated by former tenants.

Dillon Beach and Related Facilities

The Resort's beach fronting property includes a 265-space beach parking lot, restroom, picnic tables and fire rings, as well as trash services, which provide public access and associated amenities to the adjacent Dillon Beach sandy beach area. The parking lot is bound by vegetated dunes to the north and west, Dillon Creek to the south, and Cliff Street to the east. Historic photographic evidence shows that the parking lot has existed in its current configuration since at least the early 1970s. The public restroom was permitted by the County in 1967 and has not been upgraded since. The public can enter and use the facilities on foot or by bike for free but must pay a day-use fee to park a vehicle in the lot. Some evidence suggests that there has been a parking fee for some time, including as described in the LCP's Dillon Beach Community Plan from 1989 (which references a parking fee \$3/day for cars and \$1/day for motorcycles at the lot), but the parking lot and its fees have never been authorized by a CDP. In any case, when the Applicant purchased the Resort in 2018, they also further increased fees without CDP authorization. There are very few free parking options in and around the Dillon Beach community that can provide access to Dillon Beach, limited to a handful of off-street residential parking spaces and 5 free public parking spaces outside the entry gate of Lawson's Landing. As a result, the beach parking lot is effectively the only parking that is available for visitors to access the beach.

Sand dunes located between the parking lot and Dillon Beach deposit windblown sand into the lot, which, according to the Applicant, during the most significant wind events, can amount to the daily transport of up to 12 cubic yards. The accumulated sand has historically been moved using heavy machinery by Resort management, who placed it either back onto the beach, into the dune, or alongside and into Dillon Creek, without CDP authorization. More recently, there have been reports of the sand being put into large trucks and transported off-site. All of this is the subject of violation cases V-2-19-0061 and V-2-20-0058.

On September 11, 2019, the Coastal Commission approved a CDP waiver for temporary beach management activities at Dillon Beach, including collection of trash along a 1,000-foot linear stretch of dry sand using an all-terrain vehicle (ATV), on an as-needed basis but not to exceed once daily during peak season (2-19-0973-W). The

³ The Applicant asserts that it did so after consulting with HCD, including based on the premise that only HCD approval was necessary, and not CDP approval. However, as indicated above, CDPs are still required for development at this location.

CDP waiver also allowed for the placement of additional signage to educate beach users about trash disposal requirements, and establishment of (a total of) nine trash receptacles in the beach parking lot vicinity.

Inland Well Property

Just below the Resort and east of Cliff Street is a part of the Applicant's property that is mostly undeveloped and contains sensitive dune habitat, as well as Dillon Creek and its adjacent riparian corridor. There is an existing unpermitted well located just north of Dillon Creek, constructed by the previous resort owners without CDP authorization in 1989, that provides water to the local water provider, Cal Water, which services the Dillon Beach community. Historical photos show evidence of vehicle movement throughout this area resulting in degradation to the dunes, as early as the 1970s, including to access the well from the east where Cal Water holds an easement over the Applicant's property. Aerial photographs show that as recently as this year, vehicles have continued driving in and around this portion of Resort-owned property. See **Exhibit 7** for aeriels of habitat impacts over time.

Marin County has requested that the Coastal Commission take the lead on enforcement at the Dillon Beach Resort properties including those unpermitted activities occurring on portions of the site within Marin County's LCP jurisdiction as described above.⁴

Other

Historically, the Applicant and previous property owners created an additional public parking lot, just north of the Lawson's Landing entry gate at the former University of the Pacific ("UOP") Marine Station parcel, and charged the public to park in this lot, all without CDP authorization. The Applicant has ceased use of this lot for these purposes and is not proposing continued use as part of this application.

B. Project Description

The Applicant proposes to redevelop the RV park portion of Dillon Beach Resort, obtain authorization for management activities associated with the beach-fronting parking lot and adjacent sandy beach, and implement protection measures for the inland open space area east of Cliff Street. Specifically, the Applicant proposes: 1) installation of 12 after-the-fact (ATF) and 13 new park model RVs and associated development, construction of septic improvements to service the new park model RVs, demolition of an existing bathhouse, and ATF replacement of the septic system for three existing cottages; 2) authorization of a parking fee program and sand management activities for the beach parking lot, and beach clean-up and maintenance activities for Dillon Beach; and 3) restoration of dune and creek habitats, including installation of fencing on the east side of Cliff Street.

Dillon Beach Resort Improvements

⁴ The Coastal Act and the Marin County LCP allow for the local government to request that the Coastal Commission assist with, or even assume primary responsibility for, enforcement of Coastal Act and LCP violations (see, generally, Coastal Act Sections 30809 and 30810).

With respect to the new park model RVs, the proposed 25 units would vary in size and style depending on the type of model (four “A units”, two “A2 units”, two “B units”, three “B2 units”, six “D units”, four “C units”, three “E units”, and one ADA, “C unit”), ranging in size from approximately 9 feet to 14 feet in height, from 8 to 10 feet in width, and from 21.5 to 36 feet in length (see **Exhibit 3** for specific unit dimensions). All proposed units include kitchens, bedrooms, bathrooms, and small living spaces; sleep between 4 to 6 people; and are available for nightly rental with a maximum stay of 14 nights at any one time. Proposed rental fees range from \$99 per night for the smaller units (at the lowest winter rate) to as much as \$449 for the larger units (at the highest summer and winter rate). The three existing cottages sleep 6 people each and are rented nightly for \$549-599 each, depending on the season. See **Exhibit 4** for the proposed rates for all units.

Other new development directly associated with the Dillon Beach Resort includes 115 linear feet of ATF and 50 linear feet of new four-foot high open slat wooden fencing between the rows of RV units (see **Exhibit 3** for fencing locations). Additionally, the Applicant is seeking ATF and new authorization to demolish concrete slabs, a gravel surface, decks, stairs, storage space and ramps and to install a total of 4,660 square feet of permeable pavers and 25 sets of wooden steps around the RV units.⁵

The Applicant has also noted other improvements made to the property since purchase to be authorized as part of this application including: replacement of 350 linear feet of wood yard fencing around the cabins, replacement of 240 linear feet of open wood fencing along the RV park bluff edge, and replacement of 200 linear feet of rotten 1-3 foot high wood retaining walls in the RV park; repair and maintenance of the RV park utility connections; replacement of existing concrete wheel support strips; placement of 12 new portable flower boxes on the new RV patios; maintenance of existing landscaped areas around the store and restaurant; and replacement of signage at several locations.

Proposed development would also include the demolition of the existing bathhouse to expand the common open-space area that would serve overnight guests, and septic improvements to service the new units. The Applicant proposes to improve upon and construct new components to the onsite wastewater system with the capacity to process 2,640 gpd.⁶ Three of the existing 810-gallon concrete tanks would be supplemented with additional 510-gallon concrete tanks (for a total capacity of 1,320 gallons for each of the new two-tank units) to serve 16 of the units, and the existing redwood tank would be abandoned and replaced with a new 2,000-gallon concrete septic tank to serve nine of the units. These new tanks would provide twice the capacity of the daily design flows as required by Marin County EHS. In addition, a 3,000-gallon equalization (EQ) pump tank would be installed to collect and distribute septic effluent from the new 2,000-gallon tank, as well as any overflow from the leach boxes and lawn leach field and distribute it

⁵ ATF construction of 3,160 square feet and new construction of 1,500 square feet of permeable pavers, and 12 ATF and 13 new sets of wooden stairs.

⁶ Slightly more than the design wastewater flow total estimate of 2,625 gpd based off an estimated usage of 105 gpd for each of the 25 new units. Historical usage patterns from 2014-2018 indicated usage of up to 25 gpd per unit.

to the central and east leach fields. This EQ tank would be able to absorb peak weekend flows and provide for emergency storage capacity.

Three new leach fields (i.e., lawn, central, and east) would be installed, and three existing concrete leach boxes would be retained for use. The lawn leach field would provide 83 linear feet of gravity trenches, 18-inches wide, 4.5-feet deep with overflow lines to the EQ pump tank. The central leach field would be fed by the EQ pump tank and would include 2 dispersal components: 1) a 50-foot long pressure-dosed trench, 24-inches wide and 6.5-feet deep, and 2) an open bottom sand filter bed 13 feet by 19 feet. The east leach field would be 115 linear feet of pressure-dosed leaching trenches, 24-inches wide, 5-feet deep, and fed by the EQ pump tank. The distribution capacity of the leach fields is estimated as follows: leach boxes (180 gpd), lawn (598 gpd), central (trench at 600 gpd and sand filter bed at 296 gpd), and east (966 gpd) for a total capacity of 2,640 gpd consistent with and slightly above the design flow estimate. All new components would be constructed in previously developed areas.

The Applicant also proposes ATF authorization of the three-cottage septic system including the removal of a 630-gallon redwood septic tank and replacement with a 1,500-gallon concrete tank behind the cottages. The 4-inch pipeline from the new tank to the leach field situated in a vegetated dune area approximately 200 feet south of the cottages, and replacement of the leach field into a new 66-foot long, 2-foot wide, and 5.5-foot deep leaching trench would be removed and the area restored. A new gravity leaching trench six feet deep, 2 feet wide, and 60 feet long, would be installed adjacent to the cottage backyards to provide for dispersal capacity and connected to the new 1,500-gallon concrete tank.

See **Exhibits 3** for proposed project plans.

Dillon Beach and Parking Lot Improvements

The Applicant proposes ATF authorization of a parking fee program for the beach parking lot, with fees ranging from \$5 a day (for early- and late-arriving visitors and motorcycles) to \$30 a day for buses. Specifically, the Applicant-proposed parking fee schedule includes a fee of \$5 for visitors arriving before 9:00 am or after 6:00 pm for the high season (May 1st through January 31st) and before 9:00 am or after 4:00 pm for the low season (February 1st through April 30th); a year-round weekday day fee of \$10 (for hours 9:00 am to 6:00 pm in high season and 9:00 am to 4:00 pm in low season); a weekend daily fee of \$10 (low season) and \$20 (high season); a year-round \$20 daily fee for RVs; a year-round \$30 daily fee for buses, and a year-round \$5 daily fee for motorcycles. The program would also include various options for the purchase of an annual parking pass⁷ including \$300/year for unlimited use, \$200/year for local resident (those from Dillon Beach Village and Oceana Marin) unlimited use, and \$200/year for weekday/non-holiday use.⁸ The Applicant also noted that they would be willing to offer

⁷ Annual passes are monitored through stickers that distinguish the month and year so the proposed cost will get a year of parking from the date of purchase.

⁸ The Applicant indicates that the prior owner charged an annual pass fee of \$150 per year without distinctions for residents or time of year.

free parking to a maximum of 20 cars with valid California State Parks Golden Bear passes each day to accommodate low-income beach users.⁹ Guests arriving to the beach on foot or by bicycle would be able to use the Resort's beach facilities free of charge. See **Exhibit 5** for full fee schedule.

To manage the windblown sand that impacts the Dillon Beach parking lot, the Applicant proposes to regularly relocate sand from the parking lot to the beach and adjacent dune, using heavy equipment, up to once per week during the tourism high season (June-September) and once monthly during the low season (October-May) (see **Exhibit 6** for the Sand Management Plan). Sand would be placed over an approximately 60-foot wide (measured from the seaward extent of the dune to the sea) by 800-foot long (measured north to south) area above the mean high tide line, spreading the sand to a uniform depth of one foot. Sand would also be placed on an approximately 3,000-square-foot disturbed and unvegetated area immediately north of the parking area. Sand management activities also include the use of sand fencing to retain sand on the beach, just seaward of the dunes and landward of the tidally influenced area, as well as establishment of a dune vegetation restoration program that includes seeding or planting, as well as fencing and signage around the perimeter of the restoration area to prevent accidental trampling. Finally, the Applicant requests permanent authorization of the current temporary beach clean-up and maintenance activities, approved through a prior Commission CDP Waiver (2-19-0973-W), consisting of ongoing use of a motorized all-terrain vehicle for beach cleanup and installation of trash cans and signage regarding parking, safety, and trash management (as shown in **Exhibit 3**).¹⁰

Habitat Protection Measures

To prevent vehicle use within the sensitive dune habitat area east of Cliff Street, the Applicant proposes to construct fencing along the eastern edge of the property adjacent to Cliff Street. The Applicant has also expressed its willingness to conduct additional restoration on the inland property to address habitat impacts resulting from historical vehicle use and the dumping of sand into Dillon Creek.¹¹ Lastly, the Applicant has committed to working with Cal Water to pursue a local Marin County CDP to resolve the unpermitted status of the existing well and any restoration activities associated with its construction and operation. See **Exhibit 10** for a letter from Cal Water.

C. Standard of Review

This proposed project spans both Coastal Commission and Marin County CDP jurisdictions. The County, the Applicant, and the Commission have all agreed to a consolidated CDP application review for the project, as allowed by Coastal Act Section 30601.3. The standard of review for a consolidated CDP application is the Chapter 3 policies of the Coastal Act with Marin County's certified LCP, which includes the Dillon Beach Community Plan, providing non-binding guidance.

⁹ The Applicant noted that they would accept a special condition with this type of requirement.

¹⁰ CDP Waiver 2-19-0973-W was approved by the Commission on September 11, 2019.

¹¹ The Applicant noted that they would accept a special condition with this type of requirement.

D. Low Cost Visitor Serving Facilities

Applicable Policies

The Coastal Act requires development to maintain and enhance public access to the coast, including protecting and encouraging the provision of lower cost visitor and recreational facilities.¹² Section 30213 states:

Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low to moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30213 of the Coastal Act requires that lower cost visitor and recreational facilities be protected, encouraged and where feasible, provided. This section ensures maximum public access, because without lower-cost visitor serving facilities, lower-income members of the public would be more limited in their ability to access and recreate at the coast, when compared with others who may be able to afford more to access and benefit from coastal resources. The Commission has a long history of applying Section 30213 in a way that can help to facilitate lower cost overnight stay options to help ensure that all visitors, including those who may have lower incomes, can feasibly access and enjoy coastal zone resources.

The Marin County LCP Policy on recreation and visitor serving facilities similarly supports and encourages enhancement of a diversity of recreational opportunities and development of visitor-serving facilities, especially those of moderate cost as follows:

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 on 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*

¹² Coastal Act access and recreation policies cited in the next section are also applicable here and are included herein by reference.

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

Background

Coastal Act Section 30213 and LCP Policies

Coastal Act Section 30213 and the complementary LCP policy require lower-cost and moderate cost facilities to be protected, encouraged, and, if feasible, provided.¹³ Over the years, the lower-cost facilities issue related to overnight accommodations has been especially important because permit applicants have typically requested that the Commission and LCP-certified local governments approve higher-cost overnight accommodations on land zoned for visitor-serving uses (in some instances where lower-cost accommodations were already situated on the land) rather than pursuing lower-cost accommodations (e.g., economy hotels, hostels, campgrounds), resulting in the loss of either potential or actual lower-cost accommodations in appropriately-zoned areas. Overall, the Commission's past history of permitting overnight accommodations in the coastal zone confirms the need to guard against the loss or preclusion of lower-cost overnight accommodations along the coast, as recognized in Coastal Act Section 30213.

Thus, in order to facilitate lower-cost accommodations, in these previous decisions, the Commission has focused on three primary methods to do so where proposed development would have adverse impacts on lower-cost accommodations, either through conversion of existing stock or preclusion of lower-cost accommodations in appropriately-zoned areas, which include: (1) ensuring lower-cost accommodations are provided onsite as some portion of the proposed project; or (2) alternatively, ensuring an equivalent number of lower-cost units are created off-site; or (3) alternatively, ensuring "in-lieu" funds are paid to create an equivalent amount of new lower-cost accommodations to be constructed elsewhere, or a combination of these.

To implement any of these options, the Commission has first: 1) defined what is and is not a lower-cost unit; and 2) determined how many units per a given proposed project should be provided as lower cost mitigation to offset impacts caused by the proposed development. Under any of these potential approaches, the basis for requiring lower-cost accommodations (or an in-lieu fee) as mitigation for approval of a higher-cost accommodation project is premised on the adverse impacts that the higher-cost accommodations, if approved, have either on the existing stock of lower-cost accommodations or the availability of space for lower-cost accommodations in appropriate locations in the future. Thus, given the Commission's mandate to protect, encourage, and, where feasible, provide lower-cost accommodations, visitor-serving projects such as the proposed project have been carefully analyzed to ensure a

¹³ Coastal Act Section 30213 has its origins in the 1975 California Coastal Plan (the precursor to the 1976 Coastal Act). Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many such low and moderate cost facilities were being replaced by facilities that had higher costs, including particularly in terms of overnight accommodations. The Coastal Act addressed these findings in part by including the specific Section 30213 mandate to protect, encourage, and where feasible provide lower cost visitor and recreational facilities.

consistent LCP and/or Coastal Act outcome. In this case, the question of lower-cost room/fee mitigation is explained below.

Defining Low-, Moderate-, and High-Cost Accommodations

The first step to implement Coastal Act Section 30213 and the corresponding LCP requirement is to define what is and is not a lower-cost unit. In a constantly changing market, it can be difficult to define what price point constitutes low-, moderate-, and high-cost accommodations for a given area. As such, the Commission has utilized different approaches over time to define such terms, including by considering the unique factual circumstances for each particular project. In previous actions, the Commission has addressed what are appropriate terms for defining lower-cost and higher-cost hotels, including applying a quantitative methodology for determining what is considered “lower cost” in the geographic area in question.¹⁴ More recent Commission actions have used a formula to determine low- and high-cost overnight accommodations specific to different parts of the coast.¹⁵ This formula is based on California hotel and motel accommodations (single room up to double occupancy) and does not account for hostels, RV parks, campgrounds or other alternative accommodations, as these facilities do not typically provide the same level of services and amenities as hotels and motels. Rather, hostels and campgrounds are generally inherently lower cost and are the type of facilities that a mitigation measure for the loss of lower-cost overnight accommodations might require.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels in a specific coastal zone area (e.g., a city, county or defined urban area) as it compares statewide based on the average daily rates of hotels and motels across the entire State of California. Under this formula, lower cost is determined as the average daily room rates for all hotels within a specific area that have a room rate less than the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates are collected monthly by Smith Travel Research (STR)¹⁶ and are available on the “Visit California” webpage.¹⁷ To be most useful, peak season (summer) rates are utilized for the formula, and, to ensure that the lower-cost hotels and motels surveyed meet a minimally-acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties.¹⁸

¹⁴ Including CDPs 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, A-253-80, A-69-76, A-6-IMB-07- 131, 3-07-002, 3-07-003, and 3-16-0287.

¹⁵ Including LCP amendment SBV-MAJ-2-08 and CDP amendment 5-98-156-A17, and most recently in Carlsbad (LCP-6-CAR-16-0015-2 Part A).

¹⁶ Smith Travel Research data is widely used by public and private organizations for understanding overnight lodging costs.

¹⁷ See <http://industry.visitcalifornia.com/Research/> for STR’s latest California Lodging Report.

¹⁸ According to the AAA website, “to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member expectations – cleanliness, comfort, security and safety.” AAA assigns hotels ratings using a “diamond” classification, with one being the lowest and five being the highest.

Once the statewide average is identified, the Commission has used different approaches over time to define low and high-cost rooms, including that high cost is determined as the equivalent cost percentage above the statewide average room rate, and low cost is determined to be the same cost percentage below the statewide average. In other words, if \$100 was the statewide average room rate, and low-cost rooms across a certain geographic area were determined to be 25 percent less (or \$75), then high cost in that same area would be defined as those rooms 25 percent above the statewide average, or \$125. This approach was used recently in the Commission's approval of the Shore Hotel in Santa Monica in 2019.¹⁹ By definition, the hotel rooms that are more expensive than the low-cost room rate as calculated, but less expensive than the high-cost room rate as calculated, qualify as moderate-cost rooms.

Following the Coastal Commission's 2016 Lower Cost Workshop, the Resources Legacy Fund engaged Maurice Robinson & Associates, LLC (Robinson), to develop an empirically-based method that the Commission could use to determine the rate of lower cost overnight accommodations in the coastal zone.²⁰ Robinson developed a methodology similar to the Commission's survey methodology in that it relies on the market rates of economy-type hotels in the area. Robinson's method is based on the rates charged for economy motels as defined by STR. The method outlines ten steps to determine the lower cost hotel rate in a given area and can be performed by a consultant with expertise in hotel markets and feasibility analyses. However, given the difficulty of obtaining published rates or the unavailability of published rates, an alternative to this method was proposed wherein the Average Daily Rate (ADR) provided by STR for the economy motel segment within the target market area is assumed to represent the lower cost rate. Commission staff has since been recommending use of this metric where available or using a percentage of the peak season or annual statewide ADR, specifically 75% of the statewide ADR. This percentage is also consistent with the Coastal Conservancy's 2019 Explore the Coast study,²¹ in which lower cost coastal accommodations were defined as those having a daily rate of 75% or less of the statewide ADR.

This formula is based solely on rates for standard, double occupancy (2-person) rooms (equivalent to AAA one- and two-diamond rated hotels). However, the Commission has grappled with recognizing and accounting for rooms that are not standard, double occupancy rooms, and has sometimes reached differing conclusions depending upon the particular facts of a specific project. In all cases, the Commission has required proposed overnight accommodations – either via low-cost rates, per capita affordability, and/or via extensive lower-cost amenities, services, and/or public access improvements – to be accessible to the broader public, including those with lower monetary means, to meet the Coastal Act's overarching goal of maximizing public access to the State's coastal zone for all.

¹⁹ See CDP-5-18-0872 (Sunshine Enterprises LP) approved in December of 2019.

²⁰ See <https://documents.coastal.ca.gov/reports/2016/11/th6-11-2016.pdf>.

²¹ See https://scc.ca.gov/webmaster/ftp/pdf/sccbb/2019/1903/20190314Board04E_ETCO-Report.pdf.

Thus, to summarize, the Commission has in past actions: 1) defined lower-cost hotel rooms as the average daily room rate for all hotels and motels within a specific geographic area that have a room rate less than the statewide average; 2) defined high-cost hotel rooms as the equivalent cost percentage above the statewide average room rate as low cost is determined to be below the statewide average; and 3) responded to the unique attributes of each particular proposed hotel accommodation project to ensure lower-cost rooms and/or public access amenities are provided, now and into the future.

Number of Required Lower-Cost Accommodations

After defining the project as low-, moderate-, or high-cost, the Commission has then determined how many, if any, lower-cost rooms/units should be provided for a given project as mitigation for impacts to lower-cost visitor accommodations caused by the proposed development. In the past, the Commission has required replacement of the lost lower cost rooms (either on-site or off-site), or payment of an in-lieu fee for each lost lower-cost room at a rate of 1:1, **plus** 25% of the new **high-cost** rooms proposed in excess of the number of lower cost rooms lost, in order to mitigate for the loss of lower-cost overnight accommodations both now and in the future. In other words, the exact number of lost lower cost rooms required to mitigate impacts would need to be replaced on-site, off-site, or through payment of an in-lieu fee, while 25% of the proposed high-cost rooms would need to be mitigated for at the identified low-cost rate. The precise amount of required low-cost units, however, is a case-specific exercise dependent on many factors, including other public access benefits being proposed, such as when a hotel provides suite-like rooms designed for families and includes free amenities, such as breakfast or internet use.

Although the provision of on-site lower-cost accommodations has been preferred, if on-site provision is found to be infeasible, the Commission has alternatively required “in-lieu” fees for the construction of an equivalent number of lower-cost rooms/units (such as hostel beds) offsite. These funds have been paid into an account managed by an appropriate entity, such as the local government, State Coastal Conservancy, California Department of Parks and Recreation, Hostelling International, or a similar agency familiar with low-cost accommodations management to ensure that such funds are spent on new lower-cost units, including new campground and hostel facilities. In 2012, on the Monterey Peninsula, the Commission required, using this formula, a \$1.8 million mitigation payment from the Pebble Beach Company as mitigation for lack of on-site lower-cost options in the development of a new high-end resort hotel and additional rooms at the existing Inn at Spanish Bay and Lodge at Pebble Beach.²² More recently, the Commission has imposed an in-lieu fee of \$100,000 per lost motel room at the Shore Hotel in Santa Monica, with the fee based on an amount that would reflect the construction cost of replacing a standard 250 square foot motel room separate from land costs.²³

²² Monterey County LCP Amendment MCO-1-12 Part 1 (Del Monte Forest Update and Pebble Beach Company Concept Plan), approved by the Commission in May 2012.

²³ See CDP-5-18-0872 (Sunshine Enterprises LP).

In sum, the Commission has implemented Coastal Act Section 30213 by defining what is and is not a lower-cost unit, determining how many units per a given proposed project should be reserved as lower cost, ensuring that such units are provided onsite where feasible, based on the proposed development's impacts to lower-cost visitor accommodations, and, if not feasible, providing ways to mitigate for the lack of onsite lower-cost units by paying specified in-lieu fees for construction of those units elsewhere.

Analysis

As discussed in the Project Background section, the only information regarding the permitted baseline for the RV park portion of the Dillon Beach Resort is from 1969 when Marin County issued a use permit to allow for the addition of 11 trailer spaces to an existing 14-space travel trailer court, for a total of 25 spaces. This 1969 County use permit did not specify the cost of the trailer rental spaces or limit the length of time that one renter could use each space. Thus, little is known about the baseline costs or rental structure when the RV park portion of Dillon Beach Resort was established, and when the Coastal Act was enacted in 1976 (i.e., when whatever had been legally established at that time would become the baseline for CDP review purposes moving forward). However, it does appear that over time the RV park has evolved into a long-term lease operation that is more akin to residential rentals. The LCP's 1989 Dillon Beach Community Plan notes that trailer spaces were usually rented annually, and the Applicant has indicated that many of the RV space leases lasted for consecutive years and were used by the RV owners as second residences.²⁴ Thus, when the Coastal Act came into effect, the Resort was not providing true visitor-serving overnight accommodations via 25 RV rental spaces, since these RV spaces were used without any limits to the length of time individuals could stay, and most were used as second residences. That said, the use authorized was an RV park use, which is arguably a visitor-serving and short-term authorization.

The Applicant is now proposing to change the use of the site by replacing all of the now vacant²⁵ pull-through RV spaces with park model RVs owned by the Resort that would be available for a nightly rental with a maximum stay allowance of 14 nights at any one time. This would result in 100% of the site being used for short-term visitor-serving accommodations consistent with the purpose of the Resort Commercial Recreation zoning of the property, which is to create and protect areas in the coastal zone for resort and visitor-serving facilities. The proposed nightly fee would vary based on the season, time of season, and type of accommodation. The rental amounts for each type of unit at the high and low of each season are shown in the table below:

²⁴ The 1969 County use permit action did not affect the three existing cottages nor the caretaker unit. And it appears that the three cottages have been in existence and used for short-term overnight rental since before the Coastal Act was established, and this visitor-serving overnight rental use has continued to the present day and is not proposed to be modified by this CDP application.

²⁵ Because the 12 existing units are being applied for ATF, the CDP baseline for analytical purposes is the site is as if they weren't there.

RV Park & Cabins									
	Model A	Model A2	Model B	Model B2	Model C	Model ADA	Model D	Model E	Cabins
Maximum Occupancy	4	4	4	4	4	4	6	4	6
Summer Highest Nightly Rate	\$299	\$299	\$349	\$349	\$399	\$399	\$449	\$249	\$599
Summer Lowest Nightly Rate	\$199	\$199	\$249	\$249	\$299	\$299	\$349	\$149	\$549
Winter Highest Nightly Rate	\$249	\$249	\$299	\$299	\$399	\$399	\$449	\$199	\$599
Winter Lowest Nightly Rate	\$99	\$99	\$249	\$249	\$399	\$399	\$449	\$99	\$549
Current Number of Units	4	0	2	0	4	0	2	0	3
Planned Number of Units	4	2	2	3	4	1	6	3	3

The table above reflects current/proposed rental fee ranges for 3 units at \$99-\$249, 6 units at \$99-\$249, 5 units at \$249-\$349, 5 units at \$299-\$399, 6 units at \$349-\$449, and the 3 cottages at \$549-\$599 per night. The rental fees include four different rate categories (also called time of season), with unique fees for summer highest and lowest nightly rates, as well as winter highest and lowest rates. For example, the Model A unit may be available for \$99, \$199, \$249 or \$299 depending on the time of year.

The California Regional Lodging Forecast Report found that the Statewide Average Daily Rate (ADR) for the peak season (July/August) of 2019 was approximately \$172, which is also the overall ADR for all of 2019.²⁶ The ADR number reflects a standard, 2-person hotel unit with either one large bed or two single beds. Thus, per the Commission’s past methodology, lower-cost hotel rooms would be those offered at a price of \$129 per night or lower (i.e., 75% of the statewide average daily rate) and high-cost rooms would be those offered at a price of \$215 per night or higher (i.e., 125% of the statewide average daily rate); mid-cost would be those offered between \$129 and \$215 per night). Comparing the rates outlined for the proposed park model RVs above with these low-, mid-, and high-cost range estimates presents a difficult challenge because the above rates vary based on timing within each season, and these units can accommodate more people than what the standard double occupancy ADR rate reflects. Further, the units at Dillon Beach Resort offer more amenities than a standard hotel room, such as in-unit kitchens. Without taking these factors into account, it appears that model A, A2 and E units (a total of 9 units) would be considered lower-cost *only* during the winter lowest nightly rate, and these units, in addition to all other units on site would be considered moderate or high-cost during all other times of the year.

²⁶ The Commission here applies the 2019 ADR given that the ADR has dropped significantly in 2020 due to the Covid-19 pandemic (e.g., the peak season 2020 Statewide ADR was down approximately 22% from peak season 2019, and has continued to drop, where it is now 32% lower than December 2019), while prices are anticipated to rebound following the end of the pandemic.

	A	A2	B	B2	C	ADA	D	E	Cottage
Maximum Occupancy	4	4	4	4	4	4	6	4	6
Summer High	\$299	\$299	\$349	\$349	\$399	\$399	\$449	\$249	\$599
Summer low	\$199	\$199	\$249	\$249	\$299	\$299	\$349	\$149	\$549
Winter High	\$249	\$249	\$299	\$299	\$399	\$399	\$449	\$199	\$599
Winter Low	\$99	\$99	\$249	\$249	\$399	\$399	\$449	\$99	\$549
Number of Units	4	2	2	3	4	1	6	3	3

The rates shown above in green are below the low-cost threshold, orange is above the high cost threshold, and moderate rates are shown white.

However, the above-described rate distributions do not account for the fact that the particular design and amenities of the Dillon Beach Resort units afford a better value than a standard, double-occupancy hotel room, which makes the units more accessible to the general public. For example, the units are designed to accommodate families or two parties of 2 people (where cost sharing could occur), with a maximum occupancy ranging from 4 to 6. Thus, instead of needing to reserve multiple standard, double occupancy hotel rooms at market rate, a family or group of visitors can take advantage of the higher occupancy rate allowed for in the proposed park model accommodations, requiring fewer units be reserved, reducing the cost per person.

One method to account for the additional cost that may be reflected in the ADR for a room that could accommodate 4 persons would be to add 10% cost for every additional person, given that hotels typically charge a similar fee for additional persons staying in a standard hotel room without adding rooms. This would result in a cost increase of 20% to the established ADR based on 2 additional persons, and 40% to the established ADR for 4 additional persons. These calculations result in an ADR for 2019 for 4 persons total being \$206 per night and for 6 persons total being \$241 per night. The resultant effect on the cost ranges for 4 persons total would be that lower-cost hotel rooms would be those offered at a rate of \$155 or lower, mid-cost would be those offered between \$155-\$258, and higher-cost rooms would be those offered at a rate of \$258 or higher. By extension, the cost ranges for 6 persons total would be that lower-cost hotel rooms would be those offered at a rate of \$181 or lower, mid-cost would be those offered between \$181-\$301, and higher-cost rooms would be those offered at a rate of \$301 or higher.

Furthermore, the proposed in-unit amenities, including kitchens or kitchenettes, provide visitors lower-cost alternatives to eating meals at restaurants. These are amenities that make the specific accommodations where they are offered more accessible to the general public because it may allow visitors to afford to stay at these accommodations by compensating for other travel costs (e.g., food). In addition, other added benefits of staying at Dillon Beach Resort include the associated amenities, porches, ocean views, small backyards for the cottages, convenient access to the adjacent general store and restaurant, and free access to Dillon Beach. Thus, it is reasonable for the Commission

to consider these added amenities as benefits when examining where the proposed costs fall within the modified ranges identified above.

When applying the new ranges to the proposed rates discussed above which account for additional occupancy, with added consideration of the additional amenities, it appears that the three E units can be considered lower-cost,²⁷ the six A and A2 units are slightly higher-cost than the E units but still fall within the low-moderate-cost range for the majority of the year,²⁸ the five B and B2 units appear to be moderate,²⁹ and the 14 C, ADA, and cottage units would be considered higher-cost.³⁰ Thus, looking at all Resort accommodations taken together as if proposed anew, the Applicant is proposing 14 high-cost accommodations.

	A	A2	B	B2	C	ADA	D	E	Cottage
Maximum Occupancy	4	4	4	4	4	4	6	4	6
Summer High	\$299	\$299	\$349	\$349	\$399	\$399	\$449	\$249	\$599
Summer low	\$199	\$199	\$249	\$249	\$299	\$299	\$349	\$149	\$549
Winter High	\$249	\$249	\$299	\$299	\$399	\$399	\$449	\$199	\$599
Winter Low	\$99	\$99	\$249	\$249	\$399	\$399	\$449	\$99	\$549
Number of Units	4	2	2	3	4	1	6	3	3

The rates shown above in green are below the low-cost threshold, orange is above the high cost threshold, and moderate rates are shown white, when adjusted for maximum occupancy.

As described above, the most recent approach taken by the Commission in past actions to mitigate for the loss of lower cost overnight accommodations both now and in the future, has been to require the replacement of lost lower cost rooms (either on-site or off-site) at a rate of 1:1, or payment of an in-lieu fee for each lost lower cost room, **plus** 25% of the new **high-cost** rooms proposed in excess of the number of lost lower cost rooms. In this case, as stated above, little is known about the baseline costs or rental structure when the RV park portion of Dillon Beach Resort was originally established,

²⁷ All costs fall within the low to moderate range, and winter and summer high are the only rates that exceed the low-cost limit by \$44-94. Since these units provide additional amenities not found in a hotel room, such as a kitchen, it is reasonable to categorize these units as low.

²⁸ The summer high nightly rate falls within the high cost range, exceeding the high cost limit by \$41 dollars. Since these units provide additional amenities not found in a hotel room, such as a kitchen, it is reasonable to categorize these units as low to moderate.

²⁹ The summer and winter high nightly rates fall within the high cost range, exceeding the high cost limit by \$41-91. Since these units provide additional amenities not found in a hotel room, such as a kitchen, it is reasonable to categorize these units as moderate.

³⁰ All of the RV units exceed the high cost limit by \$41-48 during the summer low and the majority of the year the exceedance over the high cost limit is closer to \$141-148. The cottages exceed the high cost limit by \$248-298. Even with the additional amenities, it is reasonable to classify these RV units and cottages as high cost due to the significant exceedance of the high cost limit during the majority of the year.

except that over time the RV park evolved into a long-term lease RV rental space site that had limited public availability (due to tenants occupying the spaces year-round). And given that the applicable use permit didn't specify rates or durations of stay, it appears these pseudo-residential uses were allowable under the County's use permit (and the County has concluded as much as well), and thus set the baseline for CDP analysis purposes.

Accordingly, the 25 RV spaces were more akin to housing spaces than true lower cost **visitor-serving** accommodations, and thus do not need to be replaced at a 1:1 ratio since they are being converted to true overnight, visitor-serving accommodations available to the general public. As described above, 11 of the proposed units qualify as moderate cost, for which the Commission has not historically imposed additional lower-cost mitigations provided the project includes tangible public recreational access benefits.³¹ However, the Applicant is not proposing to fix the rates for the moderate cost units in a manner that would guarantee that they would not over time fall into the higher-cost unit threshold. Thus, here, the Commission finds it necessary to consider all moderate-cost units in terms of determining the mitigation amount. As such, the Commission applies the requirement that 25% of the proposed higher-cost and moderate-cost units should be mitigated. Specifically, 25% of the proposed 25 high/moderate cost units (and not all 28 proposed units) would need to be established as low cost, which would equate to 6.25 lower-cost units.

The Applicant has asserted that the mitigation calculation should only be based on the number of high cost park model RVs as the cottage units are not proposed to be modified through this CDP application, thus, reducing the mitigation figure to 5.5 units. However, the Commission finds it appropriate to consider the cottages as part of the low-cost analysis for a number of reasons. First, the proposed project would authorize replacement of the septic system for the three existing cottages in its entirety, which supports the continued function and use of the cottages as overnight accommodations; and thus, review of the cottages is in front of the Commission in that respect. Second, the cottages have been significantly updated and remodeled (and likely redeveloped) overtime since their original construction in 1930's, in conjunction with increasing overnight rates, without any evidence of previous consideration or review by the Commission or Marin County through the coastal development permit review process.³² Thus, it is appropriate to consider the cottage units, when analyzing how the proposed rate structure for the Resort, to be authorized through this CDP, provides for low-cost accommodations. Further, 5.5 units would need to be rounded up to six units were actual lower cost units to be provided (e.g., as opposed to calculating a mitigation fee), as they are in this case, so the distinction is really without a difference ultimately.

³¹ See, for example, (CDP 5-14-1932, Lambert, Venice, City of Los Angeles) and CDP 3-17-0581 (Rose's Landing Embarcadero Hotel)

³² The Applicant notes that they obtained County Building permits for exterior maintenance and interior remodeling for the cottages in 2019.

To meet the above identified mitigation requirements, the Applicant has proposed 6 lower-cost units and a plan to ensure that the lower-cost units remain so over time to mitigate for the higher-cost accommodations. Specifically, the Applicant proposes to offer six lower-cost units at lower cost rates as shown in **Exhibit 4** to be adjusted according to the Consumer Price Index (CPI) not more than once annually. To ensure that the units continue to provide for the proposed lower-cost accommodations, **Special Condition 8** is necessary to ensure that the Applicant undertakes development as proposed, including in relation to the Applicant's own proposed rate structure for the lower cost units as shown in **Exhibit 4**, which may be increased commensurate with the Consumer Price Index each year for the lower cost units.

Further, the Applicant has agreed to provide for additional public benefits to supplement for the additional required .25 lower cost unit (here provided via new free public access improvements for better accessing the beach, and via a required parking fee reduction – see public recreational access finding that follows). Thus, **Special Condition 1(e)** requires that the Revised Final Plans provide for the agreed upon public amenities including installation of a new bike rack and additional dog mitt stations at the beach parking lot, allowing for an improved pedestrian opening with signage to the parking lot entrance during hours when the lot is closed, and improvements to the sidewalk on the east side of Cliff Street leading from the Resort to the main entrance of the beach parking lot (e.g. clearing of overgrown vegetation) to mitigate for impacts to lower-cost accommodations from the proposed project. And **Special Condition 2** requires a reduced parking lot rate structure for the same purpose.

Lastly, **Special Condition 8** requires that all units be open and available to the general public, rather than reserved as timeshares, or other such fractional ownership; that rooms not be rented to any individual, family, or group for more than 14 consecutive days and units rentals to the same individual, family, or group shall not exceed 30 days in any calendar year; and that no individual ownership or long-term occupancy of the units shall be allowed. To further ensure that the Resort operates as proposed and approved, **Special Condition 8** prohibits the conversion of any of the units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to any other units with use arrangements that differ from the approved project. Thus, for all of the reasons described above, the proposed project, as conditioned, can be found consistent with Coastal Act Section 30213 and the LCP with respect to the protection and provision of services that are geared to a range of cost options, including lower-cost facilities.

E. Public Access and Recreation

Applicable Policies

The Coastal Act calls for the provision of maximum public recreational access opportunities, consistent with the requirement for protection of natural resource areas from overuse, and protects and prioritizes oceanfront land suitable for recreational, visitor-serving, and water-oriented recreational uses to be developed with such uses, especially lower cost recreation and visitor facilities, as follows:

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.

30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Coastal Act Section 30252 requires that new development to maintain access to the coast including by providing adequate parking facilities, as follows:

Section 30252. *The location and amount of new development should maintain and enhance public access to the coast by ... (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...*

The Marin LCP Dillon Beach Community Plan recognizes parking limitations in Dillon Beach and requires adequate parking be provided onsite in new development projects so as not to spill over into the adjacent community as follows:

CD-10.7: *...As parking is a particular concern for this subarea, sufficient parking shall be provided onsite, so that it will not spill over into neighboring residential areas.*

These overlapping policies are intended to protect access to and along the shoreline in Dillon Beach and to offshore waters for public access and recreation purposes, particularly free and low-cost access.

Consistency Analysis

The Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, nor is it enough to simply *protect* access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects and provides fundamental direction with respect to projects along the California coast

that raise public access issues, like this one. Section 30211 prohibits development from interfering with the public's right of access to the sea, including the use of dry sand. Recreational uses of oceanfront lands are protected through Section 30221.

As discussed in the Low-Cost Visitor Serving Facilities section above, the lack of lower-cost amenities can disproportionately impact lower-income visitors' ability to access and recreate along the coast. The Applicant has noted that the popularity of Dillon Beach often leads to the parking lot reaching maximum capacity during summer months, generally, and on weekends, specifically, year-round. The Applicant's paid parking lot represents the only public parking option directly adjacent to Dillon Beach. The nearest public parking is located in the village area of Dillon Beach, approximately a quarter mile to the east, and only includes a handful of publicly available shoulder parking spaces. One hundred passes per day are also available for entry to Lawson's Landing for a day use fee. Thus, visitors who drive to Dillon Beach are essentially required to pay to access the public beach and for use of the beach parking area adjacent to Dillon Beach and in the immediate area.

Throughout California's history, lower-income communities, communities of color, and other marginalized populations, generally referred to here as "underserved communities," have often faced disproportionate burdens in accessing the California coastline due to geographic, economic, social, and cultural barriers. Ensuring maximum and equitable public access to the California coastline (as required by the Coastal Act, including Sections 30210 and 30213) is consistent with environmental justice principles reflected in the Coastal Act. Coastal Act Section 30604(h) provides that the Commission may consider environmental justice issues when acting on CDP applications, such as this one.³³

Towards this end, the Commission also adopted an environmental justice policy in 2019,³⁴ committing the agency to considering environmental justice principles consistent with Coastal Act policies in the agency's decision-making process as a means of helping to ensure the benefits of coastal resources and coastal resource protection under the Coastal Act are accessible to everyone. In approving the policy, the Commission recognized that equitable coastal access is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act, finding that:

The Coastal Act's mandates to provide maximum access and recreational opportunities for all, and to protect, encourage, and provide lower-cost visitor and recreational opportunities embody fundamental principles of environmental justice. The Commission reaffirms its longstanding commitment to identifying and eliminating barriers, including those that unlawfully privatize public spaces, in order to provide for those who may be otherwise deterred from going to the

³³ 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."

³⁴ California Coastal Commission Environmental Justice Policy (March 8, 2019), https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf.

beach or coastal zone. The coast belongs to everyone, and access cannot be denied or diminished on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors...

*Understanding that even nominal costs can be barriers to access, preserving and providing for lower-cost recreational facilities is also an environmental justice imperative. This includes recreational opportunities such as parks, trails, surf spots, beach barbecue and fire pits, safe swimming beaches, fishing piers, campgrounds, **and associated free or low-cost parking areas.** (emphasis added)*

As embodied in the Commission's adopted environmental justice policy, the term "environmental justice" is currently understood to mean equitable distribution of environmental benefits, including equitable opportunities for coastal access and recreation for all. In California, equitable coastal access and recreation opportunities for all has been an elusive goal in certain areas and with respect to certain populations, especially due to historic and social factors, such as discriminatory land use and economic policies and practices.³⁵ To this point, spatial analysis of 2010 Census data across demographics groups and proximity to public shoreline access points in California shows that a majority of Californians (79.7%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.³⁶

Proposed Parking Fees

The Applicant manages and maintains the 265-space beach parking lot, and also provides free access to a beach-area restroom, picnic tables and fire rings, as well as provides trash services and maintenance for the beach more generally. These amenities are available for free for those who enter via foot or bicycle. However, the roads in and out of Dillon Beach are narrow and winding with little to no shoulders, posing limits to access in this manner. There are also few public transit options³⁷ and Dillon Beach is four miles from the nearest town of Tomales, some 20 miles from the nearest inland population centers (e.g., Petaluma), and many hundreds of miles from inland portions of the state. As a result, almost all visitors to Dillon Beach arrive via car, and need to park to be able to access the beach and shoreline. The Applicant's beachside parking lot is essentially the only place to park, and thus the manner in which it provides parking has an outsized effect on whether most people can access Dillon Beach at all.

³⁵ See, for example, *Free the Beach! Public Access, Equal Justice, and the California Coast*, by Robert Garcia and Erica Flores Baltodano, in the 2 Stanford Journal of Civil Rights and Civil Liberties (143, 2005).

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

³⁷ Marin Transit offers a Dial-A-Ride service that provides passengers with curb-to-curb pick-up and drop-off service between Dillon Beach, Tomales, and Petaluma on Wednesdays only with one-way fares for the general public for \$4.00 and \$2.00 for seniors or persons with disabilities.

As described earlier, the Applicant proposes to formally authorize a parking fee program.³⁸ Specifically, the Applicant-proposed parking fee program includes fees to park a vehicle for a day as follows: \$5 per car for visitors arriving before 9:00 am or after 6:00 pm (during what they call the 'high season' from May through January) and before 9:00 am or after 4:00 pm (during what they call the low season from February through April); a year-round weekday fee of \$10 per car; a weekend fee of \$10 per car (during low season) and \$20 per car (during high season); a year-round \$20 fee for RVs; a year-round \$30 fee for buses, and a year-round \$5 fee for motorcycles. The program would also include various options for the purchase of annual parking passes including \$300/year for unlimited use, \$200/year for local resident (Dillon Beach Village and Oceana Marin) unlimited use, and \$200/year for weekday/non-holiday use.³⁹

Some records indicate that fees have historically been charged for parking in the subject lot by the previous owners, but neither the fees, nor the increase in fees over time, has ever been authorized by a CDP (see also violation findings, below). For example, the LCP's Dillon Beach Community Plan from 1989 notes the fee for day use parking at Dillon Beach at that time was \$1 for motorcycles and \$3 for cars. Using changes in the consumer price index since 1989 to adjust this cost for inflation would result in a present-day cost of \$2.15 for motorcycles and \$6.45 for cars, both significantly less than current parking fees charged. Comparatively, the Applicant now charges more to park than other nearby and roughly equivalent public access and recreation facilities, including both for public and private sites. For example, Marin County Parks charges a daily parking fee of \$5, with an unlimited annual pass of \$95. Marin County Parks also offers a senior and disabled discounted annual pass for \$42, and anyone can check out a free weekly pass at any Marin County Library for free. Sonoma County Regional Parks charges a day use fee of \$7, with an annual pass cost of \$69. Sonoma County also offers a discounted annual senior pass (\$49) and annual disabled pass (\$39), as well as an annual low-income pass option (\$5). California State Parks charges a day use fee of \$8, with an annual pass costs ranging from \$125-195. State Parks also offers a discounted annual senior pass and disabled pass (\$3.50), as well as a low-income pass option called the Golden Bear Pass for \$5, which some coastal cities will also accept, which allows free access to their parks and beaches for these passholders.⁴⁰ Point Reyes National Seashore parking facilities are free to the public. Nearby Lawson's Landing charges \$10-20 per day depending on the time of week and season.⁴¹ In short, there is some variation in parking fees that are being charged nearby, with most rates significantly lower than at Dillon Beach.

The Applicant asserts that the beach parking fees are necessary to cover the ongoing

³⁸ This new parking fee program is currently being implemented at the beach parking lot.

³⁹ The Applicant indicates that the prior owner charged an annual pass fee of \$150 per year without distinctions for residents or time of year.

⁴⁰ For example, in the City of Half Moon Bay.

⁴¹ The day use fee amount specified in the staff report findings for A-2-MAR-08-028 (Lawsons Landing Inc) at the revised findings hearing on December 7, 2011 was a cost of \$8.00 to \$11.00 per day. Staff is looking further into this fee increase matter.

maintenance costs of these facilities, as well as the amenities provided as a benefit for the public to enjoy. Such costs include trash management and pickup, maintenance of the restrooms and associated water usage costs, and maintenance of the picnic tables and fire rings. They assert that while the fees have increased since purchasing the property, their variable fee structure has been designed to provide alternative options for those not able or willing to pay a higher fee, including discounted early or late arrival fees, discounted fees during the weekdays and during non-peak weekends, and free access for those who arrive on foot or by bike.

The Applicant also notes that the highest fee of \$20 per vehicle per day, required during peak times on peak weekends, is consistent with that of the Lawson's Landing private property to the south, and is designed in part to disincentivize large crowds from coming to the beach during peak times in a manner that the small town and narrow, winding rural roads are unable to accommodate. Further, the Applicant notes that they have hired more staff to manage the parking lot since purchasing the property to provide for better management of traffic for public safety and to facilitate maximum use of the parking lot. Lastly, the management of windblown sand into the parking lot, which has been documented over time, is an additional maintenance cost and such costs will only increase moving forward, including in terms of habitat requirements (see also Sensitive Habitat section). While the Applicant's assertion is true that it is bearing all the costs of maintenance and management of this parking lot and related facilities alone, and does not have the benefit of public funding or other cost-sharing, it is also true that this Applicant alone is accruing all of the revenues from the parking lot, as well as from the Resort overall.

In comparing the proposed fee structure to that of surrounding public and private lots, as well as a fee based on increased costs due to inflation, the Applicant is proposing a similar fee amount as inflation and nearby public and private day-use fees *only* for visitors arriving during non-peak hours, and is proposing a higher day use fee for all other vehicles at more regular and peak usage times. The annual pass options also offer residents, or those that can get to the beach during the weekday or earlier or later (which is not a typical "day at the beach," especially for those travelling greater distances to enjoy the coast) a greater benefit, thus, resulting in an adverse impact to non-residents or those who live far away, in terms of their ability to gain access to this beach at peak times. Further, the annual pass option itself is significantly higher than those of local County or State Parks' passes with similar amenities and completely lacks a lower income option at all.

To address equity, the Applicant originally noted that it would be willing to offer free parking to a maximum of 20 cars with valid California Golden Bear passes each day to accommodate low-income beach users.⁴² While this is a good start, it places a cap on lower cost access (20 spaces equates to roughly 8% of the lot), which is likely to impact lower-income individuals with valid passes who may happen to drive out to the beach on a single day, for example during high use peak times. In addition, the Commission has noted in past parking fee cases that there are limitations of the State Parks Golden

⁴² The Applicant noted that they would accept a special condition with this type of requirement.

Bear pass in that the low-income qualification requirements were limiting. There do exist potential alternative means of providing a more expansive lower-income user option. For example, Marin County Parks offers individuals with library cards⁴³ the ability to check out a free park pass from the library for a week for access to all their parks. These passes are identical to annual passes purchased by an individual (but do come provided in a case with a library bar code so it would be possible for the Applicant to distinguish between free passes obtained through the library and those purchased by individuals). Sonoma County Parks offers a \$5 lower income annual pass option (Sonoma County Vehicle Entry Pass) for Sonoma County residents as well. In short, the proposed parking fee structure is too high, does not offer an adequate lower-cost option, and its costs would appear to have the most impact on those least able to afford such parking fees and who will be disproportionately affected by the proposal. Given the parking lot essentially provides the only means to access Dillon Beach for visitors not fortunate enough to live in the community of Dillon Beach or to afford the cost of staying at the Resort, the proposal would also effectively limit beach access for any visitors coming from other areas, especially those from underserved communities. Thus, as proposed, the parking fee program is not consistent with Coastal Act requirements to maximize public access and protect lower cost recreational facilities.

Further, the Applicant and previous property owners conducted unpermitted activities over many years, including creating an additional fee-based public parking lot just north of the Lawson's Landing entry gate at the former University of the Pacific Marine Station parcel. The Applicant has ceased use of that lot for these purposes to resolve the violation but has not proposed additional means to address the impacts from these violations over time. In addition, the Applicant and prior owners have charged and increased parking fees for decades without CDP authorization and has not proposed any offsetting mitigation for the many years of public recreational access impacts attributable to such unauthorized imposition of fees. Further, as also discussed in the Sensitive Habitat section below, beginning in 2020, the Applicant collected large amounts of beach sand that accumulated in the parking lot and trucked it off-site (see photos in **Exhibit 8**). Members of the public have alleged that the sand was being sold. Either way, sand was removed from the system inappropriately, affecting not only habitat but public beach recreational space.

The Applicant has not provided a clear picture of the total amount of sand removed from the lot as a result of recent maintenance activities. However, on April 1, 2020, they noted to Commission staff that they had employed an independent contractor to transport containers holding 14-20 cubic yards of sand to an off-site location in Sonoma County. The Applicant noted that the contractor was making 2-3 trips per week, and within a few weeks, one trip per week would be adequate once the back-up of sand had been reduced. Further, based on an examination of the evidence submitted to the Commission regarding sand movement from members of the public, it appears that, from as early as March 2020 and continuing to November 2020, the Applicant had

⁴³ Library cards are available to out-of-state visitors for a cost of \$10. Getting these passes would be limited by hours of library operation.

employed a construction company to remove sand from the lot by filling two large dumpsters, or a 10-wheel tandem dump truck, with a capacity to move approximately 20 cubic yards of sand.⁴⁴ On any given day, members of the public were reporting that multiple trucks were moving sand off site, via the dumpsters or the tandem trailers, as many as 2-15 times per day over a several day period⁴⁵ (see photos in **Exhibit 8**). Assuming that this sand movement occurred at least once a month from March-November in 2020 over a 3-day period with up to 15 trucks a day, the total amount of sand moved off site could have amounted to 8,100 cubic yards, or even more.⁴⁶ Thus, it is estimated that that the Applicant removed approximately 8,100 cubic yards of sand from the beach sand system, and given the inherent uncertainties, the Commission here estimates such impact to be 10,000 cubic yards of sand were removed from the local sand supply in total.

The Commission has in the past equated impacts to sand supply as direct impacts to public beach access and recreation.⁴⁷ In those cases, the Commission calculated an in-lieu fee for such impacts as the cost of buying and delivering an equivalent volume of beach quality sand to the affected area. In this case, assuming an equivalent cost of sand of \$75 per cubic yard,⁴⁸ an in-lieu fee to address the impacts would be approximately \$750,000. As discussed further in the Sensitive Habitat section that follows, the new Sand Management Plan will address activities moving forward, but the Applicant has not proposed mitigation for any of these impacts that accrued from the removal of sand.

In addition, and as discussed in the previous section, the Applicant is asking the Commission to consider its lower-cost overnight units (6 units) at the site as sufficient mitigation (when the Commission's methodology identifies 6.25 units), and to apply its discretion to consider rates that are by definition (at some times of the year) high cost to be either low or moderate cost based on potential occupancy and amenities (which would in turn reduce required lower cost mitigation). To be clear, that discretion equates to *not* requiring an offsetting in-lieu fee for 25% of 28 high cost units, or 7 units. For comparison, in other similar cases the Commission has required other applicants to offset such impacts via a fee of \$100,000 per unit,⁴⁹ which here would equate to a fee of

⁴⁴ 10-wheel dump trucks and large dumpsters of this kind have an estimated capacity of 10 cubic yards of sand, so two would fit a combined total of 20 cubic yards.

⁴⁵ Reports of at least 2-15 trucks (with two tandem trailers or dumpsters on each truck) being filled with sand and moved in a single day or over several days. Reported accounts of these events occurred in March, April, May, June, August, October, and November 2020.

⁴⁶ 20 cubic yards per single tandem dump truck multiplied by 15 (times a day) multiplied by three (days) per month multiplied by nine (months) equates to 8,100 cubic yards of sand. IF there were more trips, as alleged, this number could be significantly more.

⁴⁷ See, for example, CDPs 2-10-039 (Land's End seawall), 2-11-009 (City of Pacifica shoreline armoring), A-3-PSB-12-042 and A-3-PSB-12-043 (Pismo seawalls), and 3-16-0345 (Honjo seawall).

⁴⁸ Used as a per cubic yard of sand value in a recent case in Bolinas, Marin County (2-17-0438, Brighton Seawall) approved by the Commission in July of 2020.

⁴⁹ See CDP-5-18-0872 (Sunshine Enterprises LP) approved in December of 2019.

some \$700,000 to offset the 7 lower cost units not provided. Although the Commission exercises that discretion here, it notes that there must be some other form of public recreational enhancement to allow for same, and it is appropriate that the parking fee schedule be reduced to help offset potential lower cost impacts that would accrue otherwise.

Thus, this is a special case of a beach parking lot that is really the only means of accessing this beach-and truly the only place to park for visitors not fortunate to live in the community of Dillon Beach-because essentially all visitor access is by car, and a case where many years of public recreational access impacts from unpermitted development are not, as proposed, adequately mitigated by this Applicant. Commission staff engaged with the Applicant to discuss a range of potential fee options that could address the Applicant's needs while not significantly adversely affect public access, especially for those visitors least available to afford fees, as well as address the other considerations discussed above.

Ultimately, staff and the Applicant found what appears to be an appropriate middle ground, wherein parking would be free during sunrise (from gate opening to 9am year-round) and sunset hours (after 3pm during winter and after 6pm during summer (i.e., the Saturday of Memorial Day to the Sunday of Labor Day weekend, inclusive)), \$10 between 9am and sunset hours identified above except during that time on summer weekends (i.e., the Saturday of Memorial Day to the Sunday of Labor Day weekend, inclusive) when it would be \$15, and free access for bikes and pedestrians. In addition, that collaboration led to an agreement that an annual pass could be purchased by anyone for \$160 (based on the previously identified cost of \$150 for the pass offered prior to 2018, adjusted for inflation), and that free parking would be provided to any visitor with a valid State Parks California Golden Bear Pass, a Marin County Parks Library pass (i.e., free parking passes that can be checked out at County libraries), or a Sonoma County Park Vehicle Entry Pass, all to help address the needs of lower income users. In addition, 10 free ADA parking spaces would be provided, and free parking would also be provided to anyone with a valid ADA placard/vehicle plates, helping to make Dillon Beach more accessible for those with disabilities. Lastly, an electric vehicle parking space would be provided on the east side of the Dillon Beach Store and Café. Thus, **Special Condition 2** modifies the parking fee structure in this manner and **Special Condition 1** requires inclusion of the electric vehicle charging station as specified. Further, **Special Condition 2** requires that the Applicant advertise this new fee structure and low-income options at the Dillon Beach Store and Café, Dillon Beach Resort and beach parking lot, and on all Dillon Beach Resort related websites. These parking fee modifications are intended to 1) address inequities of the proposed parking fee program; 2) mitigate for impacts to public access and recreation from past violations; 3) address lower cost mitigation requirements that would otherwise accrue; and 4) allow for the project to be found consistent with the Coastal Act's public recreational access provisions.

Thus, as conditioned, the ATF parking fee program as adjusted would provide equitable access to Dillon Beach for all users, consistent with the public access and environmental justice policies of the Coastal Act and would provide some mitigation for

the past violations.

Beach Maintenance

Additional public access and recreation impacts are likely to accrue from proposed project activities that would occur on the beach and in related public access areas. With respect to impacts of the sand relocation activities as further discussed in the Sensitive Habitat Section below, the project will require the movement of workers, heavy equipment, and large volumes of sand in and around the parking lot, shoreline area and public access points and will generally intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the recreational experience at these locations. These public access and recreational use impacts have been minimized through the Applicant's proposed best management practices including limiting the sand relocation activities to a specifically designated area of the beach and establishing a single designated path for vehicles and equipment to enter and exit the beach area (see **Exhibit 3**). Additionally, Commission staff has worked with the Applicant to develop a Sand Management Plan that involves limiting sand relocation activities to no more than once weekly during the peak season and no more than once monthly during the low season, which would minimize disruptions to public access on the beach and generally speaking, while also clearing parking spaces for public use, as formalized through **Special Condition 3**.

As such, potential impacts from the project can be further mitigated through construction parameters that, in addition to limiting impacted areas by clearly delineating and avoiding to the maximum extent possible public use areas, would include keeping equipment out of coastal waters and requiring off-beach equipment and material storage during non-relocation times. A revised Sand Management Plan and Construction Plan are required to implement these measures (see **Special Conditions 3 and 6**).

Traffic

Operation of the Resort and the beach parking lot already leads to significant traffic in and out of the Dillon Beach community, which leads to an overall impact on access to Dillon Beach and the surrounding areas for both residents and visitors. Many community concerns have been raised that the beach parking operation has created significant traffic impacts, both for residents and visitors to the area. These concerns are exacerbated by the fact that Dillon Beach is accessed via a single public road (Dillon Beach Road), and back-ups of queuing vehicles can extend some 1.5 miles inland. Even worse, on particularly popular beach days, these queuing vehicles make it all the way to the parking lot only to be turned away because the lot is full. According to many reports, such queuing starts as early as 10:00 am and stretches on throughout the entirety of the day in peak times, and especially now that more users are trying to gain access to the beach during the Covid-19 pandemic. The queuing has the undesired impact of blocking emergency services, impeding ingress and egress to and from the community for residents of Dillon Beach, increasing vehicle running and idling time in this rural stretch of coast (contributing to greenhouse gas emissions), and impeding access to other businesses in the area. Although anecdotal, it appears that these types of impacts have increased in the past year due to the increased use of outdoor spaces

as members of the public sought outdoor respite due to Covid-19 restrictions.

The Applicant indicates that the beach parking lot fills up around 10-15 times a year. Currently, when the lot is filling up, the Applicant notifies the Marin County Fire Department's Tomales Station, at which time staff from the Fire Department put up a sign in downtown Tomales on Dillon Beach Road indicating that the lot is full. However, occasionally backups will occur as vehicles wait outside the lot entrance for a space to open, and such backups can only be managed by the Marin County Fire Department or Sheriff on the public County maintained roads, occupying critical emergency service personnel to manage the backups.

As such, it is essential for the Applicant to implement traffic management measures and work with the community on solutions to maintain overall access to the area for the public and residents alike, especially during peak usage periods. The Applicant has already noted a willingness to co-fund an electronic sign at the Tomales Fire Station to more quickly communicate the availability of access facilities to the public before they start to travel down Dillon Beach Road. Thus, the Commission requires that the Applicant to provide a fair share contribution to Marin County, or the appropriate designated entity, towards erection of an electronic traffic sign in Tomales to display road conditions, parking availability and emergency message information prior to CDP issuance through **Special Condition 7**. In addition, the Commission requires submission of a Traffic Management Plan which requires the Applicant to conduct an analysis of current circulation conditions in and out of the beach parking lot noting when previous back-ups have resulted throughout Dillon Beach; a description of measures to improve circulation and traffic flow in the parking lot during peak use times; to work with the local community, Marin County Fire Department, Marin County Sheriff and Marin County Public Works department to develop adaptation measures to improve circulation more widely throughout the Dillon Beach Area; and to provide associated monitoring and reporting. Both measures will ensure improvements to traffic circulation in both the short- and long-term.

Resort Parking Requirements

In addition to creating the potential to increase traffic around Dillon Beach Village, overflow parking from the overnight guests of the Resort may also impact public and local access. Specifically, the Resort has allotted one parking space for each of its 25 travel trailers and park model units and 2 spaces for each of the three cottages in the grassy area across from Beach Avenue. The Applicant asserts that these 31 parking spaces are sufficient as the Resort is never at full capacity, and they note that they do communicate the one car per unit limit to renters upon reservation. However, if the Resort's overnight guests arrive in more than one vehicle during a time of peak usage contrary to the Applicant's direction,⁵⁰ they would be required to park vehicles in the neighboring restaurant and café lot or beach parking lot. This overflow would further restrict parking options for day visitors and adversely impact their ability to access this

⁵⁰ Rental units accommodate 4 to 6 people, thus potentially (if not likely) requiring travel and parking of more than one vehicle.

portion of the coast.

Coastal Act Section 30252 requires that new development maintain access to the coast including by providing adequate parking facilities. Similarly, LCP Policy CD-10.7 requires that new development provide sufficient parking onsite so that it will not spill over into residential areas. There are no specific parking requirements identified in the LCP for this zoning district and use, however, the certified pending Marin LCP⁵¹ requires that all projects comply with Marin County Code parking requirements specified in Sections 24.04.330 through 24.04.400. The use most closely related to the proposed use identified in Marin County Code Section 24.04.340 for nonresidential developments is hotels and motels which require one parking space per guest room, plus one per shift employee. In this case, the 28 units include a total of 31 guest rooms, requiring at least 31 off-street parking spaces, and the Applicant notes each shift has a maximum of 12 shift employees, requiring an additional 12 off-street parking spaces, or a total off-street parking requirement of 43 spaces. The Applicant proposes to accommodate these required spaces in an unimproved parking area across the street (31 spaces) and in 12 spaces in the restaurant parking lot⁵². Thus, the Applicant can meet their off-street parking requirements on their property consistent with LCP requirements.

Beach Maintenance

Finally, the Applicant requests authorization for the Commission's temporary approval of trash management measures including collecting trash from the beach using an all-terrain vehicle (ATV). Similar to sand management activities, which allow for the limited use of motorized equipment on the beach, the use of an ATV on the beach for trash collection purposes intrudes on and negatively impacts the habitat, aesthetics, ambiance, serenity, and safety of the recreational experience at this location. However, trash management is important for habitat protection and to maintain the beach environment for the overall visitor experience. Thus, the Commission includes **Special Condition 1** to allow for beach maintenance activities conducted consistent with **Special Condition 3** to limit the use of motorized vehicles on the beach for trash collection purposes to no more than once daily during peak season. Further, **Special Condition 3** restricts vehicles to a single path of travel and prohibits them from traveling below the mean high tide, within 25 feet of dunes, and within the 100-foot Dillon Creek buffer, as measured from the top of the creek bank. Thus, the project as conditioned will appropriately offset public access and recreation impacts.

Public Access and Recreation Conclusion

In conclusion, elements of the proposed project have the potential to result in public access and recreation impacts. However, as conditioned and as described above, the Commission finds the project consistent with the Coastal Act and LCP public access

⁵¹ The Marin County LCP Update was certified by the Commission in February of 2019, other than the Environmental Hazards section. Pursuant to the way in which the County adopted the updated LCP locally, the updated LCP will not be used for CDP purposes unless and until the Environmental Hazards portion is certified by the Commission.

⁵² The County approved CDP (CP 92-059) for the restaurant and store require at least 24 parking spaces, and 36 spaces are provided, leaving an excess of 12 spaces.

and recreation policies.

F. Environmentally Sensitive Habitat Areas

Applicable Policies

Environmentally sensitive habitat areas (ESHAs) are defined in Section 30107.5 of the Coastal Act as areas “in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem, and which could be easily disturbed or degraded by human activities and developments.” Coastal Act Section 30240 states that ESHA shall be protected against significant disruption of habitat values and that only resource-dependent uses are allowed within an ESHA. Section 30240 also requires that development adjacent to such areas be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of the ESHA. Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Section 30231 requires that the productivity of coastal waters necessary for the continuance of healthy populations of marine species shall be maintained and restored by minimizing wastewater discharges, maintaining vegetation buffer areas that protect riparian habitats, and minimizing stream alterations. Coastal Act Section 30236 limits alterations of rivers and streams to purposes including necessary water supply projects. Coastal Act Sections 30231 and 30236 state:

Section 30231. *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30236. *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Coastal Act Section 30250 requires new development to be located in areas with adequate services, including sewage disposal and traffic capacity as follows:

Section 30250 (a) *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Marin County LCP Policies on Natural Resources include the following protections for streams,⁵³ coastal dunes, and other sensitive land habitats are as follows:

Stream alterations. *Stream impoundments, diversions, channelizations, or other substantial alterations shall be limited to the following purposes:*

(1) *Necessary water supply projects, including those for domestic or agricultural purposes;*

(2) *Flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or*

(3) *Developments where the primary function is the improvement of fish and wildlife habitat...*

c. *Stream Buffers. Buffers to protect streams from the impacts of adjacent uses shall be established for each stream in Unit II. The stream buffer shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of *the stream, as measured from the top of the stream banks.*

d. *Development in Stream Buffers. No construction, alteration of land forms or vegetation removal shall be permitted within such riparian protection area. Additionally, such project applications shall identify a stream buffer area which shall extend a minimum of 50 feet from the outer edge of riparian vegetation, but in no case less than 100 feet from the banks of a stream. Development shall not be located within this stream buffer area. When a parcel is located entirely within a stream buffer area; design review shall be required to identify and implement the mitigation measures necessary to protect water quality, riparian vegetation and the rate and volume of stream flows. The design process shall also address the impacts of erosion and runoff, and provide for restoration of disturbed areas by replacement landscaping with plant species naturally found on-the site. Where*

⁵³ A nearly identical policy exists in the Dillon Beach Community Plan for stream protection E.Q.-4.1.

a finding based upon factual evidence is made that development outside a riparian protection or stream buffer area would be more environmentally damaging to the riparian habitat than development within the riparian protection or stream buffer area, development of principal permitted uses may occur within such area subject to design review and appropriate mitigation measures.

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 designed to minimize impacts on adjacent dune vegetation and habitat. Overuse in 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.

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

The Dillon Beach Community Plan, part of the certified LCP, also includes protections specifically for Dillon Creek, and local coastal dunes and dune scrub habitats as follows:

EQ-5.2 Dillon Creek. *Existing riparian vegetation along Dillon creek shall be preserved and areas of bank erosion shall be stabilized and revegetated. A 100-foot setback of development from the top of the creek bank shall be observed, in accordance with the LCP Unit 2's stream buffer policies and in accordance with Policy EQ-4.1*

EQ-7.1 Coastal Dunes. *Development in the foredunes and rear dunes located south of the Dillon Beach community expansion boundary shall be prohibited in order to preserve dune formations, vegetation, and wildlife habitats...*

EQ-7.2 Coastal Dunes. *Future development or improvements proposed for Lawson's Dillon Beach Resort or Lawson's Landing shall to the greatest extent possible be sited out of the coastal sand dune area and designed to minimize impacts on adjacent dune vegetation and habitat. Overuse in 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 and/or maintenance purposes.

EQ-7.3 Dune scrub. *Future development in the Lawson's Dillon Beach Resort shall avoid areas of dune scrub to the maximum extent feasible. If areas of dune scrub are proposed for development, such development shall be subject to detailed environmental assessment and additional seasonal surveys for the presence of rare or endangered species. Such development shall be subject to the mitigating measures recommended in the environmental assessment such as provision of buffer areas and enhancement or replacement of on-or off-site dune scrub.*

Consistency Analysis

Portions of the subject property contain sensitive habitat areas protected by the Coastal Act and Marin County LCP (including the Dillon Beach Community Plan), including foredunes, central dune scrub, and Dillon Creek and its adjacent riparian habitat area. Specifically, there are vegetated foredunes seaward of the beach parking lot and central dune scrub is located inland of Cliff Street. Dillon Creek runs along the southern extent of the Applicant's property inland of Cliff Street and flows west where it crosses under Cliff Street and spills out onto the beach. In addition, proposed project elements would be conducted adjacent to the Greater Farallones National Marine Sanctuary, which is recognized for its unique and abundant marine life. The Sanctuary provides breeding and feeding grounds for some twenty-five Federal and State endangered or threatened species, thirty-six marine mammal species, over a quarter-million breeding seabirds, and supports one of the most significant white shark populations on the planet. As such, the Commission recognizes the marine and recreational resources involved with the proposed project as sensitive coastal resources that are of high state and federal importance.

Coastal dune habitats are rare, as are their vegetation communities and many of the species associated with them. They are also easily damaged by human activities, as demonstrated throughout California, including at the project site. These habitats support rare plant communities, and rare plant and animal species, including the California red-legged frog (CRLF) and western snowy plover both of which are federally threatened. Thus, existing dune habitat areas on the subject property, regardless of their condition, including the foredunes adjacent to and seaward of the beach parking lot and central dune scrub inland of Cliff Street, are considered ESHA under the Coastal Act.

Coastal Act Section 30240 allows only resource-dependent development in ESHA and requires that development adjacent to sensitive habitats be sited and designed so as to not significantly degrade the habitats. The Marin LCP, including the Dillon Beach Community Plan, echo these protections, prohibiting development within dunes to preserve dune formations, vegetation, and wildlife habitats and limiting vehicle usage on beach areas or in dunes except for emergency or maintenance purposes. Further, the Dillon Beach Community Plan requires that existing riparian vegetation along Dillon Creek be preserved, areas of bank erosion be stabilized and revegetated, and development be setback 100 feet from the top of the Dillon Creek bank. Pursuant to the

Coastal Act and Marin LCP stream alterations are only allowed for limited purposes including necessary water supply projects.

As discussed in the Public Access and Recreation section above, the project includes parking lot sand management activities to remove windblown sand from the parking lot which accumulates at a rate of up to 12 cubic yards per day, and to place it back on the beach. Historically, previous owners would use heavy equipment to push the sand from the parking lot into Dillon Creek and onto the adjacent beach, potentially disrupting the connection between upstream Creek and shore processes, resulting in the conversion of habitat from creek to beach. These historic maintenance activities also had the potential to: alter seasonal patterns of the creek mouth formation and connection to the ocean, altering the delivery of sediment and nutrients to the coast; alter habitat availability; result in a temporal loss of a tidal connection which could affect salinity, water temperature, and potential food sources; reduce water quality upstream via stagnation; and result in subsequent impacts to sensitive species including California red-legged frog. More recently, the Applicant has collected sand and placed it back on top of the approximately one-acre dune complex located between the beach parking lot and Dillon Beach, or trucked the sand off-site. These activities likely resulted in the smothering of native dune vegetation and removal of sand from the beach and littoral cell.

Commission staff, including the Commission's Senior Coastal Engineer, Dr. Lesley Ewing, and the Commission's Ecologist, Dr. Lauren Garske-Garcia, worked closely with the Applicant to develop a Sand Management Plan that would place the sand back on the beach in a manner that would be least disruptive to the adjacent sensitive resources and provide for additional habitat benefits through revegetation and protection efforts. Specifically, sand would be moved using heavy equipment from the parking lot onto the beach and placed over a 60-foot wide (measured from the seaward extend of the dune to the sea) by 800-foot long (measured north to south) area above the mean high tide line⁵⁴ seaward of the existing dunes, spreading the sand to a uniform depth of one foot. Under this plan sand could also be placed on an approximately 3,000-square-foot disturbed and unvegetated area immediately north of the parking area.

To assure adverse impacts to sensitive habitats are avoided, lessened, or mitigated to the extent possible, allowable sand movement activities would occur during low tide, be limited to once per week during the busy (peak) season and once per month during the low season to allow for the recovery, migration, and replenishment of any biota that would be impacted by the regular placement of sand. Movement activities would also be limited to a single path of travel above the wet sand area to further limit sand compaction and disruption of the beach environment. In addition, the Applicant would place sand fencing to retain sand on the beach, just seaward of the dunes and landward of the tidally influenced area. Lastly, the Applicant would conduct a dune vegetation restoration program that includes removal of invasive species, seeding or planting of native, appropriate species, as well as placement of exclusionary fencing and signage

⁵⁴ The Applicant owns the beach property extending west to the high tide line. Any activities conducted on the adjacent property may need approval from the State Lands Commission.

around the perimeter of the restoration area to prevent incidental trampling. The revegetation efforts would have the dual benefit of providing habitat benefits while retaining and aggregating sediment to prevent movement of windblown sand into the parking lot in the future. Per this Plan, sand movement onto the existing vegetated dunes and within the creek is prohibited. Activities within the 100-foot LCP-required creek buffer would be allowed to continue within the existing developed parking lot footprint, but no vehicle movement or sand placement would occur seaward of the parking lot boundaries, within 100 feet of where the creek spills out onto the beach as measured from the top of the creek bank or edge of the wet sand where there is no defined bank.

The Commission has included **Special Conditions 3 and 4** which requires submission of a Sand Management Plan that will include all the parameters discussed above, as well as a comprehensive Habitat Restoration Plan. Thus, as conditioned, the sand management activities proposed for the beach parking lot and adjacent beach will be consistent with the Coastal Act and LCP policies for protection of ESHA, marine resources and water quality.

However, the Sand Management Plan as proposed would not provide mitigation for the impacts to the creek from past sand dumping. The Applicant has expressed their desire to address all proposed development as well as unpermitted activities as part of this application. There are opportunities for creek restoration in the area inland of and adjacent to Cliff Street stretching upstream, which would include removal of invasive vegetation, revegetation with locally and genetically appropriate native species, limiting invasive species encroachment back into the most sensitive areas, and continued ongoing maintenance on a regular basis to ensure successful establishment of native vegetation. Thus, **Special Condition 4** also requires submission of a Habitat Restoration Plan to restore approximately 0.4 acres of the riparian vegetation adjacent to the creek shown on **Exhibit 9** in yellow.

In addition, as discussed in the Public Access section above, the Applicant requests authorization for the Commission's temporary approval of beach management activities approved through 2-19-0973-W, including trash collection and removal from the beach using an all-terrain vehicle (ATV) as-needed, but not to exceed once daily during peak season. The Marin County LCP, and more specifically the Dillon Beach Community Plan, prohibit the use of motorized vehicles on beaches and dunes except for emergency or maintenance purposes. The Commission does recognize the benefit of allowing for efficient trash management which would keep trash off the beach and from getting into adjacent Sanctuary waters. Thus, limited use of an ATV for beach clean-up purposes is allowed if operated consistent with the parameters outlined in **Special Condition 3**, which limits the activity to no more once daily during peak season, and requires that the vehicles stay outside of sensitive habitat areas and their adjacent buffers.

With respect to the dune area east of Cliff Street, historical activities within this area, including the unpermitted installation and operation of a well within the required Dillon Creek buffer and vehicle movement throughout the adjacent habitat areas to access the

well, have likely resulted in habitat impacts through the clearing of vegetation and disturbance to the wildlife habitat corridor; water drawdown of the creek which may have resulted in the reduction in surface water for available species, near-surface or adjacent wetlands, and extent of riparian vegetation/corridor; and ongoing disturbance to the ground and vegetation from maintenance activities. The unpermitted well is currently not being directly used by the Applicant but is being used as a water source for Cal Water, which provides water service to Dillon Beach community as a whole. Removing the well without a more thorough analysis could affect water availability in Dillon Beach. Due to the integral involvement of an outside party and potential community-wide impacts, the Applicant has committed to working jointly with Cal Water on an application to Marin County⁵⁵ for the installation and operation of the well and related mitigation separate and distinct from this CDP application.

Historical aerial photographic evidence shows that over a period of many decades, including up to the present day, there has been continuous vehicle disturbance throughout the dune complex east of Cliff Street beyond what appears would have been needed to access the unpermitted well discussed above. Specifically, images captured by the California Coastal Records Project between 1979 and 2019 indicate an expanding and contracting area of dune vegetation, with vegetation shrinking as tire tracks appear throughout the approximately one-acre area, and rolling, vegetated dunes replacing them as tire tracks either disappear, or become limited to a single track.⁵⁶ According to the Applicant, this area was previously only used for access to the unpermitted water supply well that was constructed by the previous Resort owners in 1989. However, a separate vehicle access point exists for the unpermitted well from the east which connects to an easement held by Cal Water for a separate well (Coast Springs Well). That easement, which is also over property owned by the Resort, is located approximately 1,000 feet east of the unpermitted well and can be accessed via an existing gravel road which heads east paralleling and eventually connecting to Dillon Beach Road (see **Exhibit 1**). Thus, vehicle access through this area and to the subject well is not needed regardless of whether the well is eventually permitted by Marin County or not.

To address habitat impacts and vehicle disturbance to this area, the Applicant proposes to install a fence along the eastern boundary of Cliff Street to prevent vehicle movement in this area. However, this action would not proactively address the historical unpermitted use of this area and resultant impacts to central dune scrub vegetation considered ESHA. Thus, the Commission requires that **Special Condition 4** include a Habitat Restoration Plan for this approximately one-acre area as shown in **Exhibit 9** in purple. In addition to blocking off the area to vehicle movement, the Restoration Plan shall include the seeding or planting of appropriate dune species and monitoring for success until it provides for a self-sustaining natural habitat. The Commission here exercises its discretion to find such restoration adequate to not only put back what was removed via unpermitted development, but also to offset habitat loss over that time

⁵⁵ The application is expected to be submitted in early 2021.

⁵⁶ See <https://www.californiacoastline.org>.

period (and is not here requiring separate compensatory mitigation for those years of impacts and resultant loss of habitat values that will take years to re-achieve) including as these impacts appear to have been the result of prior owners' management of this area.

In addition, in 2019, Marin County Environmental Health Services (EHS) approved the replacement of the Resort's septic system servicing the three existing cottages. In doing so, they allowed removal of a 630-gallon-per-day capacity redwood septic tank and replacement with a larger 1,500-gallon concrete tank behind the cottages, replacement of a 4-inch pipeline from the tank to the leach field through dunes and coastal bluff, and replacement/expansion of the leach field into a new 66-foot long, 2-foot wide, and 5.5-foot deep leaching trench in the same location situated in a vegetated dune area approximately 200-feet south of the cottages. This development resulted in the removal of approximately 2,500 square feet of ESHA in direct conflict with the Coastal Act and Marin County LCP policies. And although the Applicant received EHS signoff, it did not pursue nor obtain a CDP for the development.⁵⁷ Because the development replaced all components of the system in their entirety, with some project elements located in sensitive dune habitat, the development required a CDP (per Title 14, California Code of Regulations Sections 13252 and 13253). The Applicant originally requested after-the-fact authorization of the cottage septic replacement as part of this CDP application.

Ultimately, however, the septic system is not a resource-dependent use allowable in ESHA, and thus cannot be approved consistent with the Coastal Act. As a result, it must be removed and relocated and the affected area restored. The Applicant has agreed to remove the components of the septic system and restore the affected area. In addition, they have proposed construction of a new gravity leaching trench six feet deep, 2 feet wide, and 60 feet long, installed adjacent to the cottage backyards to provide for dispersal capacity and connected to the new 1,500-gallon concrete tank. Thus, **Special Condition 1** requires the removal of the piping and leach fields and modifications to the on-site septic plan to illustrate the location of the new septic components proposed as part of this project. Further, **Special Condition 4** will include this area as part of the inland dune habitat to be restored as part of the final inland Habitat Restoration Plan.

Lastly, to ensure future protection of the habitat restoration areas discussed above, **Special Condition 5** requires the Applicant to place a deed restriction on their property requiring that no development, as defined in Coastal Act Section 30106, would occur in the Habitat Restoration Areas identified in **Special Condition 4** (as generally shown in

⁵⁷ At the time that County EHS was reviewing the septic repair plan for the cottages, there was no discussion on whether or not the proposed work needed a CDP (and indeed, EHS is not the County entity tasked with making those types of CDP determinations). Separately, there was also some confusion about how the LCP and CDPs apply to RV parks, including as the County Board of Supervisors had relinquished certain authority pertaining to the RV park in 1990 to the State Department of Housing and Community Development (HCD). However, the County only relinquished enforcement of the state health and safety code at the site, and the Coastal Act and LCPs still apply here (as they do to other RV parks in the coastal zone). In other words, although it is true that HCD regulates certain aspects of the Resort's operations, the Mobile Homes Park Act does not supersede state authority granted in the Coastal Zone through the Coastal Act, including LCP/CDP requirements.

Exhibit 9) except for Sand Management Plan activities (**Special Condition 3**), Habitat Restoration Plan activities (**Special Condition 4**), and seasonal fire management of vegetation on the slope south of the RV park if required by Federal, State or County fire requirements and if approved by the Executive Director as overall providing an ecological benefit as well.

The other proposed development which would occur at the Resort would all be in previous developed, paved areas including the improvements to supplement the septic system. The east leach field would be located closest to the inland dune scrub complex but will still be appropriately setback approximately 40 feet from the coastal dune scrub areas. Further, the septic system has been designed to provide for twice the capacity of daily design flows, consistent with Marin EHS requirements, using a conservative estimate of 105 gallons per day for each of the 25 new units. Thus, adequate wastewater storage and dispersal capacity has been provided in a manner that would not lead to impacts to adjacent habitat areas or groundwater supplies consistent with Coastal Act Sections 30250 and 30231. Thus, the proposed development at the Resort, as conditioned, would be consistent with the ESHA and water quality protection policies of the Coastal Act and Marin LCP.

Conclusion

As conditioned, the project would include significant habitat restoration that will address impacts to on-site sensitive habitat areas. Habitat benefits will be achieved through the implementation of the Sand Management Plan and the Habitat Restoration Plan, as described in **Special Conditions 3 and 4**. The proposed development, including beach management activities, has been designed and conditioned to protect adjacent dune habitats and coastal water quality. Therefore, as conditioned, the Commission finds the project consistent with the water quality, stream, and sensitive habitat protections of the Coastal Act and Marin LCP.

H. Public Views

Applicable Policies

Coastal Act Section 30251 states:

***Section 30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Marin County's LCP Land Use Plan includes policies requiring the protection of public views:

***New Development and Land Use Policy 3: Visual Resources (a).** The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant*

views as seen from public viewing places.

The LCP's Dillon Beach Community Plan recommends planning and design that integrates the development at Dillon Beach Resort with other areas of the Community, and encourages development at the Resort to be sensitive to local natural beauty and compatible with the scale and character of the Dillon Beach Village area as follows:

Objective CD-11. *To encourage development at [the] Dillon Beach Resort to be sensitive to the area's outstanding natural beauty and to be appropriate in scale and architectural quality for a West Marin coastal village.*

Policy CD-11.1: Compatible design. *Siting and architectural design, including materials, color, scale, and siting of buildings, signs, parking configurations, and landscaping should harmonize with the existing character of Dillon Beach. Compatible design features include: a) One- and two-story building heights; b) A series of small structures versus individual, large, bulky structures; c) Facades that minimize the feeling of bulk; d) Periodic spaces between buildings to create visual corridors; e) Varied size, forms, exterior walls, fenestration, and rooflines that create the feeling of small-scale, village design; f) Rooflines that protect views from neighboring properties; and g) Individual onsite parking areas or small, inconspicuous group areas.*

Consistency Analysis

The Coastal Act requires that development be sited and designed to protect public views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. The Marin LCP, including the LCP's Dillon Beach Community Plan, requires development at the Resort be sensitive to the area's scenic and natural resources and be appropriate in scale and architectural quality for a West Marin coastal village.

In addition to maintaining the total number of RV rental units at 25, the bulk and scale of the new travel trailers and park models RVs would not vary significantly from previous RV Resort development and would be located within the same designated spaces. According to the Applicant, the previous RV units ranged from 8.5 to 12 feet wide (not including pop-out walls), while the proposed units would range from 8 to 10 feet 4 inches wide. This difference in the width of the units would result in the reduction of more than a foot per unit for some units, freeing up additional outdoor space and public views by visitors and residents. Prior RVs ranged in height from 8.5 to 13 feet tall, and the proposed park models would vary from 9 feet 3 inches to almost 14 feet tall, with a total increase in height of less than 1 foot.⁵⁸ See **Exhibit 11** for a comparison of photos from before and after installation of the new units.

⁵⁸ Additionally, the RCR zoning designation does not contain maximum building heights, nor does the LCP describe height restrictions for this site. The certified pending LCP limits the height of primary structures to 25 feet and accessory structures to 15 feet.

Unlike the RVs that preceded them, the rooflines of the proposed units alternate to include flat, pitched, curved, and beveled features, creating a less visually intrusive, and more uniform appearance than would a strictly flat-styled roof consistent with LCP Policy CD-11.1, that more closely resemble the original cottages that existed prior to the conversion to the RV Park (see **Exhibit 11**). Additionally, the Applicant proposes to remove existing visual clutter from the RV Resort area, including the decks, stairs, and storage sheds that were constructed by previous RV owners, as well as the existing 575-square-foot bathhouse, which commonly blocked any possible view corridors between the RV units themselves. In this way, the proposed project would achieve greater consistency with LCP Policy CD-11(d) and considers the scenic and visual qualities of this coastal area consistent with Coastal Act Section 30251.

However, as proposed, the 48-inch tall lateral wood slat fencing as shown in **Exhibit 11** that would separate the two rows of park model units, does create a visual blockage between the public road and views of the ocean for people traveling on foot, bike and by car inconsistent with LCP Policies 3 and CD-11.1, as well as Coastal Act Section 30251, which aims to protect and maximize public views. The Applicant asserts that the fence is necessary for safety as there is a drop between the front and back rows of RVs that ranges from 18 to 27 inches in height (although railings/fences are not typically required for grade variations of less than 30 inches, as is the case here). To address view and safety concerns, the Commission here requires that fencing in public views be limited as much as possible, and that allowed fencing be limited to that necessary for public safety and required user-area separation, where such fencing is required to be as visually permeable and as low as possible, and any allowed separation fencing lower than 30 inches from grade and constructed of natural materials with an open design (e.g., cedar split rail). See **Special Condition 1**. In short, if there are true public safety issues, the condition allows them to be addressed, and otherwise favors public views over site fencing. Any fencing not explicitly approved is required to be removed.

Thus, as conditioned, the project is consistent with the visual resource protection policies of the Coastal Act and Marin LCP.

I. Other Agency Approvals

Marin County

The project includes components that will occur in Marin County. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the County (see **Special Condition 11**).

Regional Water Quality Control Board

Septic improvements that are included in the proposed project may, in addition to requiring approval from Marin County Environmental Health Services, require approvals from the Regional Water Quality Control Board. As such, this approval is conditioned to ensure that the project (as approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the Boards (see **Special Condition 11**).

Greater Farallones National Marine Sanctuary

As some project elements are located adjacent to the mean high tide line and project elements, such as sand management activities, may result in impacts to coastal waters, authorization for the project by the Greater Farallones National Marine Sanctuary is a requirement of the project. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the Marine Sanctuary (see **Special Condition 11**).

State Lands Commission

As some project elements are located west of the high tide line (outside of the Applicant's property boundaries), such as sand management and beach maintenance activities, and may result in impacts to coastal waters, authorization for the project by the State Lands Commission is a requirement of the project. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the State Lands Commission (see **Special Condition 11**).

Army Corps of Engineers

The U.S. Army Corps of Engineers (ACOE) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Portions of the project may be located within ACOE jurisdiction, including within and along Dillon Creek, and the use of equipment and machinery on the beach up to the high tide line also has the potential to impact these areas. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from ACOE (see **Special Condition 11**).

J. Other

Public Rights

The area associated with this CDP application includes areas that are clearly public, as well as other areas historically used by the public, including the sandy beach areas. Although the Commission has identified areas of public land and public use herein, the Commission here does not intend its action to waive *any* public rights that may exist on the affected properties. Thus, this approval is conditioned to make that clear and to require the Applicant to agree and acknowledge the same, including that this Applicant shall not use this CDP as evidence of a waiver of any public rights that may exist on these properties now or in the future (see **Special Condition 9**).

Future Permitting

The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of the same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a CDP

amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 10**).

Tribal Consultation and Cultural Resources

Coastal Act Section 30244 requires reasonable impact mitigation for development that would adversely impact archeological or paleontological resources.

Section 30244. *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The project, as well as previously conducted activities now authorized after-the-fact, propose numerous ground-disturbing activities in areas on the site, such as the general area of Dillon Creek, and in locations within and surrounding the dunes, known to contain both Tribal Cultural Resources, as well as archeological, cultural, and historical resources.⁵⁹ In Commission staff consultation with the Federated Indians of Graton Rancheria, it was agreed that in order to adequately protect Tribal, archeological, cultural and historic resources, the presence of a Tribal Cultural Monitor during ground-disturbing activities would be required, and that if any articles of significance are discovered during construction, all activity that could compromise such resources must cease. In addition, the Applicant is required to work with the Tribe to reach an agreement on disposition that adequately protects all Tribal Cultural Resources. Therefore, in order to assure adequate protection of Tribal and cultural resources as required by the Coastal Act, the Commission imposes **Special Condition 12**, requiring the measures suggested by Graton Rancheria. As conditioned, this project will be consistent with the cultural resource protection requirements of the Coastal Act.

Indemnification

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on pending CDP applications if the Commission's action is challenged by a party other than the applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 13** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts (see **Special Condition 13**).

K. Violation

Violations of the Coastal Act/Marin County LCP exist on multiple properties owned by Dillon Beach Resort and include, but are not limited to, the placement of 12 park model

⁵⁹ Telephone communication with Buffy McQuillen, Tribal Heritage Preservation Officer (THPO), Federated Indians of Graton Rancheria (December 21, 2020).

RV units; use of heavy machinery to clean or groom the beach, grade and reshape dunes, place sand on the beach, into the dunes, or alongside and into Dillon Creek; removal of sand from the paved parking lot and adjacent dunes and trucking the sand offsite; charging and raising fees for beach parking; creating and charging for parking in an overflow parking lot; installation of a well in or adjacent to sensitive habitat on the parcel east of Cliff Street; degradation of the dunes (from vehicle use) on the parcel east of Cliff Street; replacement of an existing septic system to serve the existing cottages; installing fencing and patio pavers, all without benefit of a CDP.

As is explained in this staff report, the Applicant has agreed to halt some of the above activities or seek after-the-fact (ATF) approval in this application. In order to address impacts to sand dunes and creek/riparian areas associated with some of the above described unpermitted development activities, the Applicant has agreed to **Special Condition 4**, which requires that damaged dune and creek areas be put back to their former condition or better. The Applicant is not proposing to include ATF authorization for the unpermitted well located adjacent to Dillon Creek in this application. Rather, the Applicant proposes to work with Cal Water (the water company utilizing the well) as they obtain an ATF CDP from Marin County with Cal Water as the applicant. **Special Condition 4** requires that any creek/riparian restoration occurring in or along Dillon Creek, on the Applicant's property, be designed to be compatible with and subject to the same provisions as the restoration plan required by this CDP.

Although development has occurred without benefit of a CDP, prior to submission of this CDP application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and Marin County's LCP. Commission review and action on this CDP does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein. In fact, approval of this CDP is possible only because of the terms and conditions included herein, and failure to comply with these terms and conditions would also constitute a violation of this CDP and of the Coastal Act. Accordingly, the Applicant remains subject to enforcement action just as it was prior to this CDP approval for not complying with past CDPs and engaging in unpermitted development, unless and until the terms and conditions of this CDP are satisfied and the approved project completed, fully implementing all required mitigation.

L. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of 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 that the activity may have on the environment.

Marin County, acting as lead CEQA agency, determined the proposed project was exempt from non-CDP discretionary approvals, that it would require only a ministerial

building permit, and exempted it from CEQA requirements. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding findings in this report have discussed the relevant coastal resource issues with the proposal, and the CDP terms and conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

5. APPENDICES

A. Substantive File Documents

- CivicKnit, *Dillon Beach Resort Coastal Development Permit Application*, December 23, 2019.
- CivicKnit, *Dillon Beach Resort Coastal Development Permit Application*, July 17, 2020.
- CivicKnit, *Coastal Development Permit Application Supplemental Information*, November 2, 2020.
- The Marin County Planning Department and Wallace Roberts & Todd, *Dillon Beach Community Plan*, August 1989.
- Questa Engineering Corp. *RV Park Septic System Upgrade and Repair Plan for Dillon Beach Resort, Dillon Beach, California (APN 100-162-01 and 100-141-12)*, March 27, 2020.
- Coastal Commission CDP waiver file for 2-19-0973-W.
- Coastal Commission Violation files for V-2-19-0016 and V-2-19-0061.
- Marin County CDP CP 92-059/UP 92-048/DM 92-060.
- Marin County Use Permit for 25 travel trailer units dated March 10, 1969.

B. Staff Contacts with Agencies and Groups

- Kings Point Beach, SGS Partners, and Portola Beach LLCs (DBR Ownership, Applicant)
- CivicKnit (Applicant's Consultant)
- California Water Service
- Environmental Action Committee of West Marin
- California Coastwalk
- Concerned Citizens of Dillon Beach
- Federated Indians of Graton Rancheria
- Marin County Environmental Health Services
- Marin County Supervisor Dennis Rodoni
- Marin County Public Works Department-Transportation Division
- Marin County Planning Department