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Steve Padilla, Chair
California Coastal Commission
455 Market Street, Suite 228
San Francisco, CA 94105

Re: Lawson's Landing Inc.: #A-2-MAR-08-028-A2. (FRI 9a)

Dear Chair Padilla and Coastal Commissioners:

I write on behalf of the Environmental Action Committee of West Marin (EAC) to support your staff's recommendation for approval with conditions of the requested coastal development permit amendment for Lawson's Landing (A-2-MAR-08-028-A3; FRI 9 (a)). The most important parts of this proposed development will complete the Commission's direction provided in the conditions of the Lawson's 2011 coastal development permit, for installation of a wastewater treatment system that, when operational, will finally end more than fifty years of ocean pollution at the site. As conditioned by staff, the Applicant's proposal is unobjectionable.

The only matter of contention is the Applicant's proposal to construct an Emergency Vehicle Access (EVA) road. As proposed the EVA road would cut directly through ESHA that this Commission in its previous actions has directed be preserved and restored. Commission staff recommends that the EVA road be eliminated from the proposal, and EAC supports that recommendation.

1. The Coastal Act requires protection of ESHA.

Public Resources Code § 30240 (a) provides:

“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”.

As the staff report makes clear, the area through which the EVA road is proposed is ESHA. Although the Applicant continues to contest that conclusion, the staff had completed their research and reached that conclusion prior to the Commission’s denial of the Applicant’s previous proposed coastal development permit amendment in 2017, and the Commission affirmed that conclusion when it denied that proposal. Because that area is ESHA, and the proposed EVA road is not a use dependent upon the ESHA resources, the road cannot be approved consistent with §30240.

2. The Fire Marshal has not required a road through ESHA.

The Applicant suggests that the EVA road has been “required” by the County Fire Marshal, Scott Alber. This is simply not the case; no such requirement has been imposed. Mr. Alber stated, in a June 3 communication to staff, that “there are very few issues that will compel us to categorically “deny” a permit being issued. Also, there are very few projects that meet all code requirements, so we are constantly seeking compromise and alternative solutions to achieve the intent of the Code.” Later in that communication Mr. Alber concludes, in bold, “we are certainly open to other proposals/compromises that will satisfy all.”

3. The Fire Department does not have the authority to require this EVA road through ESHA.

Nor does it appear that the Department could require an EVA road in that location at this time. The Fire Department’s review is based upon the development proposed in this amendment and that development

does not provide a nexus for such a requirement. The project description provides for:

“...construction of a wastewater management system (including collection, treatment, and dispersal facilities); improvements to the entrance, roadway and parking facilities, including landscaping, five public parking spaces outside the entry gate, and construction of storage and office buildings; relocation of a fuel bunker; seasonal food truck usage; installation of emergency boat storage; construction of new agricultural barn; pier removal, and habitat restoration.”

Nothing in this project description invokes a hazard or creates the potential for a requirement for an EVA road through ESHA. Staff’s evaluation of this project description found it to be, as conditioned, consistent with the hazards policies of the Coastal Act, as well as with the approved Hazard Response Plan. The development proposed in this amendment does not provide a basis for the Fire Department to require the EVA road through ESHA.

4. The safety of recreational visitors to Lawson’s Landing does not depend upon the existence of this short EVA road.

Neither the original development approved by the Commission in 2011 nor the development proposed in the present amendment provide a nexus for a requirement that the EVA road be constructed through the ESHA where it is presently proposed. The Commission’s 2011 coastal development permit for the principal Lawson recreational development required the preparation and approval of both a Traffic Management Plan and a Hazard Response Plan. Both have been prepared and approved as required. The designated emergency exit under these plans is Sand Haul Road, which is the secondary access necessary in case the principal egress route past the entry gate is blocked.

No safety requirement for the protection of recreational visitors in either of these plans relies upon an EVA road through the ESHA in Area 6. Nor would the existence of the EVA road change the exit route for

anyone in the lower recreational areas of Lawson's Landing. If for some reason the primary exit road was blocked near the entrance gate, as suggested by the Applicant, or if it were blocked further north, for example where Cliff St. crosses the creek, campers would still exit on Sand Haul Road, and never reach the area of the proposed EVA road. Hence, none of that prior development approved by the Commission in 2011 provides a nexus for a requirement by the Department for an EVA road in that location; nor does it create a predicate for approval by the Commission now of the EVA road through the ESHA as proposed in this amendment. All of the hazards identified by the Applicant in their approved Hazard Response Plan are mitigated without regard to an EVA road through the ESHA. Implementation of that approved plan provides complete mitigation for the hazards identified in the 2011 approved Lawson's development.

The only other Lawson development that could provide such a nexus for the EVA road is the development proposed in this amendment itself. Yet as previously discussed, nothing in the project description for the proposed development provides any predicate for a requirement that the EVA road be constructed. Hazards requiring an EVA road through ESHA simply are not created by this proposed development. And if for some reason, any particular development proposed in this amendment, the construction of a building for storage and office uses for example, is thought by the Commission to create the nexus for approval of the EVA road through ESHA, the solution is not to approve the destruction of ESHA but rather to deny that particular proposed development. Neither the proposed Lawson development nor the EVA road provide a legal basis for development in ESHA under Coastal Act § 30240. Staff is absolutely correct on this point. To summarize, neither the Commission nor the Fire Department has the authority, based upon the development proposed in this amendment, to require the EVA road through the ESHA. If the Commission disagrees, it should simply not approve the portion of the development proposed in the amendment that provides the suggested nexus for the authority to approve the road. PRC § 30240 clearly provides no other legal alternative for the Commission.

5. If the County thinks that there is a community benefit for an additional EVA road, it should be the applicant for that project.

We recognize however, that there may be a potential benefit for the Fire Department and the County in the proposal for an EVA road somewhere in this area. That benefit is principally to the community of Dillon Beach “as a whole”, to use Mr. Alber’s words, rather than in relation to the particular Lawson development. [See Commission Correspondence.pdf, p.24]. If one hypothesizes the 975-year tsunami discussed in the staff report (p. 70), then the EVA road might arguably serve as a potential secondary egress connecting route from Dillon Beach, connecting Bay Drive to Sand Haul Road. This hypothetical also presupposes that the tsunami would overwhelm the road near the Lawson gatehouse, yet not close Cliff Drive south of Dillon Beach where it crosses the creek. It also presupposes that residents of Dillon Beach would not be able simply to exit on Dillon Beach Road, seemingly on higher ground throughout than Cliff Drive. But whether this secondary exit route is necessary or desirable, and whether it is the best of whatever alternatives might exist for such a secondary route, is far beyond the scope of the development proposal before the Commission. No such analysis has been done. But all of these decisions are properly County decisions, and it would be for the County, not the Lawson’s to best evaluate the various alternatives and to initiate such a project. No potential benefit to Dillon Beach changes the analysis for this amendment. The proposed EVA road through ESHA is not permitted under the Coastal Act and cannot be approved in this amendment consistent with PRC § 30240.

6. Conflict resolution cannot be used to approve this EVA road because the proposed development does not present a conflict between Coastal Act policies and because an alternatives analysis has not been conducted.

Even if the Commission were to consider that the EVA road in this location might be approved utilizing conflict resolution under PRC § 30007.5, the discussion above makes it clear that it cannot be approved at this time in this manner. First, as the staff report demonstrates, the proposed EVA road is inconsistent with the provisions of PRC § 30240

and cannot be approved consistent with the Coastal Act. Although in some communications the Applicant continues to contest the determination of the Commission that the area is ESHA, the staff report is also completely clear that this determination was made by the staff prior to the hearing on the proposed amendment to the Applicant's CDP in 2017, and was affirmed by the Commission when it denied that amendment proposal. The Applicant did not contest the legality of that determination. Thus, the only other possible means of Commission approval of such a road would be to utilize the conflict resolution provisions of the Act.

Coastal Act § 30007.5 provides that when a proposed development raises a conflict between two separate policies of the law, the Commission may resolve that conflict in the manner most protective of significant coastal resources. Although the Applicant has not specifically raised that possibility we comment upon it here to make clear that this possibility does not provide a legal basis for approval in this instance.

There is no actual conflict among Coastal Act policies. The most likely Chapter 3 policy that might be suggested to be in conflict with § 30240 is § 30253 (1) which requires that new development "minimize risks to life and property in areas of high geologic, flood, and fire hazard". But there is no conflict between those policies. As previously discussed, no part of the proposed development creates a hazard that invokes § 30253 in a manner that would require the EVA road. Just as there is no nexus in the proposed development for the Fire Department requirement, there is no nexus in the proposed development for the Commission to invoke § 30253. If there is any element of the proposed development that is in conflict with § 30253 and would require the EVA road through the ESHA, the Commission should simply deny that portion of the proposed development.

Further, as the staff report makes clear, there has not been a proper alternatives analysis. The "potential proposals/compromises" that might "satisfy all", per Mr. Alber's email, have not yet been explored. Staff reports that it discussed "a series of potential options and alternatives" with the Applicant but that all of these were rejected by the Applicant for various reasons. The staff report is not clear as to

whether staff discussed any of these options with the Fire Department, and the staff report does not indicate what these options may be, or why they were rejected by the Applicant. To the extent that the Applicant previously has discussed options to its proposal, it has done so based upon the assumption that the EVA road will bisect the ESHA. Every option reconfigures its desired development and finds the reconfiguration wanting. Underlying the analysis of every option is the assumption that all of the proposed development is so important that it must take precedence over the existence of the ESHA. But in the analytical framework of the Coastal Act, this is the wrong underlying assumption. Under the Coastal Act, conservation of ESHA comes first; permitted development is subordinate to preservation of the ESHA.

Thus, because there is not a conflict between Coastal Act policies (the EVA road is not required to be approved in order to fulfill or satisfy a Coastal Act policy, and there is no nexus between the development under consideration and a hazard requiring the EVA road) and because there has not been a proper alternatives analysis, (either of other possible ways to satisfy the Fire Department's concern, or of the configuration of the Applicant's proposed development), the Commission cannot find that there is a conflict between Coastal Act policies and resolve that conflict in favor of approval of the EVA road.

For all of these reasons the Commission should approve the staff report, and approve the proposed development with the exception of the proposed EVA road, which must be denied.

Sincerely,

[Original signed by]

Ralph Faust

CC: Coastal Commissioners
John Ainsworth, Executive Director