

RESOLUTION NO. 2008-_____
RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS
CERTIFYING THE LAWSON'S LANDING
MASTER PLAN, COASTAL PERMIT AND TIDELANDS PERMIT APPLICATION
FINAL ENVIRONMENTAL IMPACT REPORT

SECTION I: FINDINGS

- I. WHEREAS, in 1998, the project sponsors, the Vogler and Lawson Families, submitted a Master Plan, Coastal Permit, and Tidelands Permit including a land use and development plan and a resource management plan for all uses on the 850+ acre property. The property consists of beaches, coastal sand dunes, various types of wetlands, and hillside lands. The property is located immediately south of the community of Dillon Beach, and is bordered by Tomales Bay to the south, the Pacific Ocean to the west, and adjoining agricultural properties and Valley Ford-Franklin School Road to the east. The primary use on the property, and focus of the Master Plan, Coastal Permit, and Tidelands Permit, are the existing recreational uses and changes proposed therein, located on approximately 180 acres in the southwestern corner of the property. Those uses include an existing 233-space travel trailer and recreational vehicle park, a 1,000-vehicle campground, and associated services, facilities, and activities. The existing operation is not proposed to be expanded. Proposed modification to the recreation-related facilities and activities included in the Master Plan include modifications to the existing water storage and distribution facilities, sewage disposal facilities, remodeling and replacing structures and other facilities on the property, circulation changes on and to the property, and modifications to various recreational activities and programs, including: fishing, clamming, boating (including a boat rentals and a boat launch), a small commercial boathouse, hiking, beachcombing, environmental education and enhancement, and two sewage disposal stations. The Master Plan also includes the existing agricultural (grazing) use occurring over a majority of the property, and six existing residences and two proposed new residences on the property. The subject property's address is 137 Marine View Drive, Dillon Beach, and is further identified as Assessor's Parcel 100-100-48 et al; and

- II. WHEREAS, zoning on the property is C-RCR (Coastal, Resort and Commercial Recreation), and C-APZ-60 (Coastal, Agricultural, Production Zone, one unit per 60 acres). Under the C-RCR zoning, a Master Plan is required for the ultimate development of the site. The purpose of C-RCR zoning is to create and protect areas within the coastal zone for resort and visitor serving facilities, with an emphasis on public access to recreation areas. The proposed Lawson's Landing Master Plan was submitted for processing pursuant to Chapter 22.45 of the Marin County Zoning Code which describes the procedures for processing master plans and precise development plans in the County. Among the purposes

of the master plan procedures are to allow for phased development, provide general direction on site design and development, and land uses, as well as protect natural resources, scenic quality, and environmentally sensitive areas. The intent of the procedures is to allow a master plan to lay out the general parameters of a proposed development and its resource protection features, and rely on a subsequent precise development plan or other improvement plans to define the precise details of location, design, and engineering related to construction of the development and its supporting facilities, in a manner that is consistent with the general guidance of the master plan. The existing, permitted agricultural and residential uses of the property were incorporated into the proposed Master Plan at the County's request so that upon review and possible approval of the Master Plan, there would be one complete record of the property's land use entitlements. Environmental review of the existing uses was limited to examining any potential effects or cumulative effects of those uses on the proposed recreational uses and other facilities; and

- III. WHEREAS, Marin County has exercised varying degrees of regulatory authority and land use reviews for the site since the 1930's. The County and the project applicant have been engaged in a long and complex process to develop a master plan and grant the necessary permits for activities at Lawson's Landing. The County has sought to gain increased regulatory control over the use of the site since the 1960's. However, in the ensuing years (decades), the County has also acknowledged that the task of determining the extent to which the existing land uses at Lawson's Landing are authorized or unauthorized would be extremely difficult to prove with legal certainty. Such a process would require detailed historical accountings and documentation of activities from the time the property was acquired, through its development history, and throughout the approximately 50 year period the County assumed various levels of jurisdiction over land uses in the area of the County that included Lawson's Landing. (Data to clearly document legal or illegal uses over the entire history of Lawson's Landing is not available. County file records, particularly for the earlier periods of site development are not very conclusive, complete or consistent). In 1970 County Counsel advised the Planning Director, among other considerations for regulation of the site, that the extent to which the existing use is legal non-conforming is uncertain, but it appeared that a "sizeable portion" may not be legal non-conforming. However, he further advised that it would be difficult to determine the extent of potential legal non-conforming use and recommended, in conformance with previous direction from the Board of Supervisors on the matter, that the Planning Commission require the property owner to submit a Master Plan with upgrades to the existing development to bring the entire operation, both potentially illegal and legal non-conforming uses up to appropriate standards, rather than pursue a zoning violation enforcement action; and
- IV. WHEREAS, in 2000 John Roberto Associates, a consultant retained by the County at the applicant's expense, completed an Initial Study/Mitigated Negative Declaration for the current project Master Plan and Coastal Permit application.

The Initial Study evaluated impacts of the Master Plan based on the assumption that current authorized uses on the property were part of the existing setting baseline and thus not considered in evaluating the potential effects of the proposed Master Plan. This assumption was based on the fact that the existing 233 recreational Trailers and 1000 vehicle campsites had been previously permitted by the California Department of Housing and Community Development (HCD) via a "permit to Operate" first issued in 1992 long after these uses had been established. Prior to proceeding on this assumption the matter was discussed among staff, the Planning Director, County Counsel and the environmental consultant. The issuance of the HCD "Permit to Operate" was never challenged under CEQA. It was determined that it would not be possible or practical for the County's environmental review to determine the nature or extent of any environmental resources that may have already been impacted by the existing uses permitted by HCD or what previously existing resources were supplanted by existing uses on the site over the years. After detailed review of the historical record it was further concluded that this approach was consistent with prior determinations of the Board of Supervisors, Planning Commission and Counsel opinion to proceed with a Master Plan to bring the entire operation up to appropriate standards. There would be substantial uncertainty in the outcome of a code enforcement approach to determine which existing uses were potentially legal non-conforming uses under local County authority, were previously permitted by the County, or which might be treated as illegal uses; and

- V. WHEREAS, in October 2000, the current project application Initial Study and Negative Declaration were circulated to agencies, the public and interested parties for a 30-day review and comment period. Comments were received from several agencies and the public commenting on the need for an EIR for the project. Objections to the Negative Declaration principally included the use of the baseline for existing uses noted above, project impacts related to the proposed leachfield, sand dunes, rare and endangered species, wetland habitat, traffic and access. The County Environmental Coordinator determined based on the comments received that a full scope EIR was required for the project. In consultation with the County, the project applicants subsequently agreed to preparation of the EIR on their Master Plan; and
- VI. WHEREAS, several commenters on the Initial Study, including an attorney representing environmental groups, had questioned the inclusion of the existing site uses in the baseline and legality of the baseline analysis under CEQA. The attorney for the project sponsors had also commented on the baseline, questioning why existing day use was not included and opining that inclusion of existing uses was legal under CEQA. To address this issue in the EIR, the County, with agreement of both attorneys sought a legal opinion from Remy, Thomas, Moose, Manly, a Law firm specializing in CEQA law, regarding the appropriate baseline in this case. Based on this opinion, the County determined to proceed with the Draft EIR utilizing an environmental baseline that included all uses on the project site with use levels at the time the NOP was published. It

was again concluded that this approach was consistent with prior determinations of the County to proceed with a Master Plan process; and

- VII. WHEREAS, in 2002, the County independently selected and contracted with the environmental consultant firm, EDAW, to prepare the EIR at the applicant's expense. In September 2002, a Notice of Preparation (NOP) was distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, Federal, State and local agencies and special districts, surrounding property owners, and other interested groups and individuals. The NOP was published in a newspaper of general circulation for a 30-day comment period. A public scoping session was conducted at an evening meeting in the Dillon Beach community on December 5, 2002, to further identify environmental issues and concerns of the public for evaluation in the EIR. Following the NOP and scoping process, the time period for completion of the Draft EIR was suspended while awaiting additional project and environmental information from the project sponsors concerning the proposed leachfield design, site hydrology issues and other issues. This information was developed between 2002 and 2005; and
- VIII. WHEREAS, the Draft EIR was completed in July 2005. On July 22, 2005, copies of the Draft EIR, and a notice of the date and place of the public hearing on the adequacy of the Draft EIR were distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, Federal, State and local agencies and special districts, surrounding property owners, and other interested groups and individuals. A Notice of Completion was published in a newspaper of general circulation to begin an extended fifty-seven (57) day public review and comment period, which concluded on September 16, 2005; and
- IX. WHEREAS, the Planning Commission held a public hearing on the Draft EIR on September 12, 2005. At that hearing, the Planning Commission received testimony from public agency representatives and members of the public on the analysis provided in the Draft EIR. In some cases, comments were also received on the merits of the project. During the public hearing, a number of comments were received on the development of the environmental baseline for the Draft EIR including comments from Commissioners. After the hearing and after considering the comments received, the Planning Commission decided to continue the public hearing on the Draft EIR to a future meeting. This hearing was subsequently scheduled for October 10, 2005, effectively extending the Draft EIR comment period an additional twenty-four (24) days, from September 16, 2005 to October 10, 2005 and resulting in a total 81-day Draft EIR review and comment period. On October 10, 2005 the Planning Commission held the continued meeting of the Draft EIR for the Lawson's Landing Master Plan. One of the primary topics under consideration by the Planning Commission at this meeting was whether to recommend the Draft EIR be revised to incorporate an alternate environmental baseline based on previous comments received and discussed during the September 12, 2005 meeting. After considering the staff

report and testimony provided by Marin County Community Development staff regarding the analysis, case law and data used in developing the current environmental baseline, written comments received up to the date of the hearing and public testimony presented at the hearing, the Planning Commission determined that the environmental baseline presented in the Draft EIR did not need to change; therefore, recirculation of the Draft EIR would not be required; and

- X. WHEREAS, on October 17, 2005, the Environmental Action Committee (EAC), and Marin Sierra Club appealed the Planning Commission's October 10, 2005 determination not to revise the Draft EIR baseline or recirculate the Draft EIR. The appeal on the baseline issue was tentatively scheduled for the Board of Supervisors regular meeting on November 22, 2005. On November 7, 2005 the Environmental Coordinator sent a letter to the EAC and Sierra Club addressing the data used in compiling the baseline use figures used in the Lawson's Landing EIR. The letter included a substantial number of documents confirming existing use figures used in the Draft EIR derived from gate count records during peak season weekends and related file documents going back to the 1970's verifying the existing conditions at the Landing. On November 15, 2005 the EAC and Sierra Club submitted a letter to the County withdrawing their appeal. In a letter to the EAC and Sierra Club dated November 21, 2005, the Environmental Coordinator confirmed withdrawal of the appeal, again noting that at their October 10, 2005 meeting the Commission accepted the Draft EIR baseline with the use levels identified in the Draft EIR and determined not to revise the baseline or recirculate the Draft EIR; and
- XI. WHEREAS, after the withdrawal of the appeal on the Draft EIR, the County initiated preparation of the Final EIR Response to Comments. While in the process of preparing the Final EIR, the California Coastal Commission (CCC) notified the County and project applicant in November 2005 of the CCC's intent to proceed with a Coastal Act violation regarding the existing (baseline) uses on the property. The CCC subsequently issued a letter dated February 21, 2006 alleging that the project applicants had a Coastal Act violation regarding alleged existing unpermitted development at the project site and that enforcement actions were being sought against the project applicant. In response to this letter, Marin County suspended preparation of the Final EIR to consult further with the CCC. Subsequent discussions were held between County and CCC staff to address potential resolution of the issues raised in the letter. It was agreed that CCC issues regarding alleged unpermitted development at the site were primarily related to the merits of the existing uses of the project site that were to be considered in the County's action on the merits of the Master Plan for approval and not the EIR or EIR existing uses baseline. It was also agreed that the County should have the opportunity to complete in a timely manner its Master Plan and Coastal Permit merits process before any action by the CCC is taken. To inform these merits decisions, as well as provide additional information to support

existing uses, it was determined that additional biological studies, including a Coastal Act wetland delineation and more precise identification of environmentally sensitive habitat areas, should be done. In consideration of this, the CCC determined to suspend their enforcement action against the project applicants pending the timely completion of the additional biological studies and completion of Marin County's environmental review and local permitting process. The project applicants were required to submit a formal Coastal Development Permit application to the CCC for review and consideration which would include the additional requested biological studies. On June 29, 2006, Marin County staff, the EIR consultants, the project applicants and their consultants, and CCC staff met at Lawson's Landing to discuss the protocol and requirements for conducting the additional biological studies that would help determine which uses at Lawson's Landing are potentially proposed or existing in coastal wetlands; and

- XII. WHEREAS, in February 2007, Marin County and the CCC received copies from the project sponsors of the additional biological studies and a detailed engineering analysis confirming the adequacy of the alternate leachfield site recommended as mitigation in the EIR. On February 27, 2007, Marin County authorized its environmental consultants to peer-review the project applicant's additional studies for inclusion in the Final EIR and resume preparation of the Final EIR for the Lawson's Landing Master Plan; and
- XIII. WHEREAS, the Final EIR Response to Comments was completed in September 2007. During the total 81-day public review period for the Draft EIR, 113 comment letters were received in addition to testimony received at the hearings on the Draft EIR. Comments received primarily addressed concerns with the programmatic nature of the EIR, Master Plan and project level of detail, existing uses baseline, wastewater system, hydrology, alternate wastewater system location, sand dunes, sensitive species and habitat, wetlands, traffic and access. The Final EIR provides written responses to all of the written comments, public testimony and comments and concerns of the Planning Commission on the Draft EIR; and
- XIV. WHEREAS, the Final EIR consists of four volumes: Volume IA, Final Draft EIR; Volume IB, Final EIR Response to Comments; Volume IIA Technical Appendix A through L and Volume IIB, Technical Appendix J through N. On September 28, 2007, copies of the Final EIR documents were distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, Federal, State and local agencies and special districts, surrounding property owners, and other interested groups and individuals. A Notice of Availability of the Final EIR was published in a newspaper of general circulation to begin a two week (14-day) public review and comment period on the adequacy of the Final EIR Responses to the earlier comments on the Draft EIR, pursuant to Marin County EIR Guideline procedures. The review period concluded on October 12, 2007; and

- XV. WHEREAS, a total of 23 comment letters were received on the Final EIR during the public comment period. Many of the comments reiterate the same comments submitted on the Draft EIR. These principally involved the programmatic nature of the EIR, Master Plan and project level of detail, existing uses baseline, wastewater system, hydrology, alternate wastewater system location, sand dunes, sensitive species and habitat, wetlands, traffic and access. In some cases the responses to comments received on the Final EIR resulted in changes to the text of the Final EIR. Where changes are made to the Final EIR, they are noted in the specific response; and
- XVI. WHEREAS, the Final EIR Amendment was completed in January 2008 and incorporates additional responses to comments received during the Final EIR review and comment period. This document is part of the Final EIR for consideration with the Final EIR Volumes IA, IB, IIA and IIB. On January 4, 2008, copies of the Final EIR Amendment were distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, Federal, State and local agencies and special districts, surrounding property owners, and other interested groups and individuals. A Notice of Availability of the Final EIR Amendment was published in a newspaper of general circulation to commence a 24-day public review period prior to the Planning Commission hearing to consider recommendation to the Board of Supervisors (BOS) for certification of the Final EIR as adequate and complete. The 24-day review period was provided as a courtesy to allow interested parties additional time to review and understand responses provided in the Final EIR Amendment prior to the Commission's action for recommendation on certification of the Final EIR; and
- XVII. WHEREAS, the Planning Commission made findings regarding the program level of analysis and the environmental setting baseline used in the Final EIR, as follows:
- A. The Lawson's Landing Master Plan EIR serves as a program EIR as provided in the State CEQA Guidelines Section 15168. As such, its purpose is to consider the environmental effects of the whole of the proposed master plan, consider alternatives to the entire master plan, and examine cumulative impacts of the collection of proposed facilities and resource management actions that make up the proposed master plan. A program EIR can be used with plans or other general criteria (such as in this case, a Master Plan for use of the property), to govern the conduct of an ongoing program.
 - B. The Final EIR evaluates how environmental conditions would be expected to change as a result of implementation of the Lawson's Landing Master Plan. The EIR addresses both the impacts resulting from construction of proposed new facilities to support continuation of existing (baseline) camping and related recreational uses of the site and a cumulative evaluation of the project's contribution to the environmental impacts from existing on-site uses and other projects within the region. The baseline environmental setting used

in the EIR, against which environmental effects are evaluated, is the physical environmental conditions that existed in the vicinity of the project at the time the Notice of Preparation was published and the EIR initiated. The baseline conditions included the existing ranching and agricultural operations, sand quarrying, (since terminated), and the residential uses on the property that are authorized or have been permitted under relevant County zoning regulations as legal uses. The baseline also included the existing recreational uses, such as the 233 space trailer park, 1000 vehicle camp ground and 200 vehicle day use that may or may not have been granted prior County authorization or permit approvals.

- C. The baseline approach used in this instance was also approved by independent expert CEQA legal review and is in compliance with State EIR Guideline provisions and relevant case law. The EIR is not the appropriate forum for determining the nature and consequences of prior conduct of a project applicant and an EIR is not required to develop a baseline that accounts for alleged prior misuse. Further, use of a baseline that differs from current conditions could interfere, conflict with, or unfairly amplify any separate enforcement action that might otherwise occur. As stated before, the Planning Commission approved the baseline used in the EIR in 2005 and no appeal of that determination succeeded.

XVIII. WHEREAS, the following information was added to the Final EIR (Volume II, Appendix L), after circulation of the Draft EIR for review and comment and before circulation of the Final EIR for review:

Vegetation Communities and Update on Special-Status Species Issues, Lawson's Landing Dillon Beach, Marin County, California prepared by Monk & Associates dated September 12, 2006 and amended October 30, 2006.

Investigation, Presence, and Geographic Extent of Wetlands as Defined by the California Coastal Act, Lawson's Landing, Marin County, California prepared by Monk & Associates dated February 2007.

Lawson's Landing – Alternative Wastewater Disposal Site Evaluation prepared by Questa Engineering dated June 25, 2007.

Additional information was also added to the FEIR Amendment after circulation of the Final EIR for review and comment and before circulation of the Final EIR Amendment:

Marin Countywide Plan Update 2005 (Adopted by the Board of Supervisors November 2007)

Information added to the Lawson's Landing Final EIR and Final EIR Amendment is not significant under CEQA provisions. Substantial changes to the project or environmental setting have not occurred and no new significant environmental impacts nor substantial increase in the

severity of an identified significant impact were identified. Therefore, there is no need to recirculate the Final EIR; and

XIX. WHEREAS, the Marin County Planning Commission reviewed and considered the information in the Final EIR Volumes IA, IB, IIA, IIB, Final Draft EIR, Final EIR Response to Comments, Final EIR Appendices, the Final EIR Amendment Volume, and the EIR administrative record, for adequacy, completeness and compliance with CEQA, State CEQA Guidelines, and County Environmental Review Procedures.

XX. WHEREAS, on January 28, 2008, the Marin County Planning Commission conducted a public hearing to consider a recommendation to the Board of Supervisors to certify the Final EIR and voted unanimously to recommend that the Board of Supervisors certify the Final EIR for the Lawson's Landing Project. The Final EIR and comments on the Final EIR together with staff's report recommending certification of the Final EIR were provided to the Commission; and

i. WHEREAS, the Planning Commission directed staff and the EIR consultant to prepare an errata sheet on the Final EIR for consideration by the Board of Supervisors; and

XIX. WHEREAS, the Planning Commission directed staff to prepare a letter to the Board of Supervisors memorializing the Commission's recommendation that following the Board's certification of the EIR, the Board of Supervisors establish a deadline for the applicant to submit a revised application for the master plan, coastal permit and tidelands permit, and a timeframe for the Planning Commission and Board of Supervisors to take action on the merits of the project.

SECTION II: ACTION

XX. WHEREAS, the Marin County Board of Supervisors reviewed and considered the information in the Final EIR Volumes IA, IB, IIA, IIB, Final Draft EIR, Final EIR Response to Comments, Final EIR Appendices, the Final EIR Amendment Volume, the Errata Sheet, and the EIR administrative record, for adequacy, completeness and compliance with CEQA, State CEQA Guidelines, and County Environmental Review Procedures; and

XXI. WHEREAS, on March 18, 2008, the Marin County Board of Supervisors conducted a public hearing to consider certification of the Final EIR, and to receive testimony on the adequacy of the FEIR for certification, and considered comments on the Final EIR together with staff's report recommending certification of the Final EIR.

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Board of Supervisors makes the following findings:

1. The recitals above are true and accurate and reflect the independent judgment of the Board of Supervisors.
2. Notice of the Planning Commission and Board of Supervisors hearings on the Lawson's Landing project environmental review documents were given as required by law and the actions were conducted in accordance with CEQA, and the State CEQA Guidelines; and
3. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Draft EIR and to submit written comments on the adequacy of the Final EIR for certification. These opportunities for comment meet or exceed the requirements of CEQA and the County Environmental Review procedures; and
4. All comments submitted during the public review and comment period on the Draft EIR, the public hearings on the adequacy of the Draft EIR conducted by the Planning Commission and the public review and comment period on the Final EIR and hearing by the Planning Commission on the Final EIR for recommendation for certification were responded to adequately; and
5. The Lawson's Landing Final Environmental Impact Report consists of five volumes: Volume IA, Final Draft EIR; Volume IB, Final EIR Response to Comments; Volume IIA Technical Appendix A through L; Volume IIB, Technical Appendix J through N; a Final EIR Amendment Volume; and Final EIR Errata Sheet; and
6. The Board of Supervisors were presented with all of the information in the administrative record, testimony, and EIR documents for the project Final EIR, and the Planning Commission has reviewed and considered this information and the Final EIR; and
7. The Final EIR (a) has been completed in compliance with the intent and requirements of CEQA and the State CEQA Guidelines, and the County EIR process, (b) reflects the independent judgment and analysis of the County of Marin, and (c) has been presented to and reviewed and considered by the Board of Supervisors in its deliberations regarding approval of the Lawson's Landing Project.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Marin County Board of Supervisors certifies the Final Environmental Impact Report for the Lawson's Landing Master Plan, Coastal Development Permit and Tidelands Permit as adequate and complete in compliance with CEQA, the State CEQA Guidelines and the County

Environmental Review Procedures, and adequate and complete for consideration in making a decision on the merits of the project.

BE IT FURTHER RESOLVED, that the Marin County Board of Supervisors, determines to establish a timeframe for the Planning Commission and Board of Supervisors to take action on the merits of the project applications for approval or disapproval, including setting a deadline for the applicant to submit a revised application for the Master Plan, Coastal Permit and Tidelands Permit and directs staff to prepare said timeframe for future reference to guide the applicant, Planning Commission and Board in further processing of the project applications and action on the project.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this ____th day of _____, 2008, by the following vote:

AYES: SUPERVISORS

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK