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Mr. John Ainsworth
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
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Dear Jack:

Thank you for the opportunity to meet with you last week regarding the proposed amendment to the Lawson's Landing Coastal Development permit. On behalf of the Environmental Action Committee of West Marin, we write to clearly articulate our concerns and to urge you to recommend that the Commission deny the proposed amendment.

INTRODUCTION

The amendment proposes two types of development in Area 6 of the property, an area now designated as coastal dune scrub ESHA, and which is also the habitat of and a corridor for the California Red-Legged Frog. The applicant proposes to place the new Lawson's Center (a complex of office, retail space and other buildings) in Area 6 of the property and also to move the wastewater treatment facilities and two leach fields to that Area of the property.

The applicant is operating under a Coastal Development Permit (CDP) that was approved by the Commission in 2011 utilizing the conflict resolution provisions of the Act. Three conditions were added to that 2011 CDP to protect Area 6, given its sensitive nature.

1. Special Condition #2 limits development in Area 6 to those places in that Area that already have been legally developed;

2. Special Condition #4 requires the preparation of a Protection, Restoration and Enhancement Plan (PREP), and requires that the PREP provide for the removal of "any development located within the two CRLF corridors between Areas 6, 8, and the pond inland of Area 4," (unless "shown to be legally permitted") and restoration of the previously developed areas to functioning habitat;
3. Special Condition #21 limits future development in Area 6 to agriculture and improvements to Sand Haul Road.

As we articulated in our meeting and will discuss in more detail below, the Commission does not have a legal basis to approve the development proposed in this amendment, because:

- The development proposed is inconsistent with three special conditions (#2, #4, and #21) of the permit previously issued by the Commission;
- The development proposed is inconsistent with §30240 of the Coastal Act because it would significantly disrupt the habitat values of the ESHA and is not a use dependent upon those resources;
- The Commission cannot now use conflict resolution to approve this amendment proposal in a manner that contravenes and undoes the resource protections found necessary as part of the conflict resolution utilized and the mitigation required to approve the original coastal development permit; and,
- There are feasible alternatives for the proposed development in other locations on the Lawson property.

THIS AMENDMENT IN RELATION TO THE ORIGINAL CDP

The amendment now proposed by Lawson's Landing seeks approval for development that was specifically prohibited in the Commission's initial approval. At the time of the Commission's consideration of a permit for development at Lawson's Landing in 2011, there was already development in Area 6, and there was an understanding that while some of it was legal, much was not. It was also recognized that part of Area 6 fell within the required 300-foot buffer zone for a pond that was habitat for California Red Legged Frogs (CRLF) and that other large parts of Area 6 needed to be protected as a corridor for the frogs. The Commission thus found that large parts of Area 6 are red-legged frog habitat, and

that all of Area 6, apart from the portions of Area 6 that have been legally developed, is coastal dune scrub ESHA.

In order to protect the ESHA and California red-legged frog habitat in Area 6 the Commission imposed several conditions. In Special Condition #2 the Commission prohibited any development in any part of Area 6 unless it was proposed in portions of that Area that were already legally developed. In Special Condition #4.A.3.c the Commission required removal of all illegal development "within the two CRLF corridors between Areas 6, 8, and the pond inland of Area 4," and restoration of functioning habitat in those areas. Thus, these two conditions together prohibit development in any part of Area 6 not shown to be legally developed and require the removal of all development in Area 6 that is not shown to be legally developed and the restoration of those illegally developed areas to appropriate functioning habitat.

But the Commission went further by addressing possible future development in Area 6. In 2011 the Commission was aware that the applicant intended at some future date to apply for approval of a so-called Lawson's Center at some future date, moving a number of activities from Area 2 to Area 6. However, the Commission wanted to ensure that the CDP was, in the words of Commissioner Bochco, "comprehensive to the property," that it would cover all development that would ever take place on the property. Special Condition #21 was adopted specifically to ensure that no future development would occur on Area 6 apart from that which was permitted in the 2011 permit.

Before adopting Special Condition #21, however, the Commissioners asked if any additional development, such as the Lawson's Center, was essential to the economic success of the campground, and was assured by the applicants that it was not. Commissioners also asked staff what would happen to the Lawson's development being discussed if it could not go in Area 6, and were told that this development would remain in Area 2. After much discussion, the Commission adopted an amending motion that resulted in Special Condition #21. Thus, the CDP restricts development on the entire property, now and in the future, to:

- Development expressly permitted in Special Conditions #1 and #2 of the 2011 permit;
- Agriculturally related development consistent with the certified LCP;

- Improvements to Sand Haul Road consistent with Special Condition #12 (after an EIR);
- A wastewater system on the upland portion of the property;
- Development on parts of Areas 6 and 8 that are already legally developed.

The development proposed in the amendment is flatly inconsistent with both the specific limitations of these conditions, and with the clear intent of the Commission when it enacted the conditions.

CONFLICT RESOLUTION

The Coastal Act Does Not Support Conflict Resolution for This Amendment

What Is left, for those who would propose development that is clearly prohibited both by the Coastal Act and by the specific conditions imposed by the Commission? Apparently, it is conflict resolution once again. Staff is being asked to consider conflict resolution to be a game with no limits. No matter what commitments were made, nor limitations specified, it can all be redone if the applicant wants more.

For whatever reason, the applicants prefer to have the wastewater system in Area 6, in addition to retaining the upland disposal site. They would also prefer new and larger administrative buildings, retail space and other amenities that would be possible if they can build on ESHA and in CRLF habitat, rather than the more limited facilities now in Area 2. Applicant is apparently arguing that all this is visitor-serving development, and that since visitor-serving development is a priority under §30222, the Commission can and should find that the conflict between this development and the habitat protections of §30240 be resolved in favor of the development. Stated simply, the applicant proposes that wastewater treatment facilities, offices and a convenience store are more protective of significant coastal resources than protections of ESHA and red-legged frog habitat. This is not a position that you should embrace.

But there are other, compelling reasons why conflict resolution cannot be employed in this instance. First, there are feasible alternatives to the applicant's proposal. The 2011 CDP identifies a location for the wastewater system on an

upland, agricultural portion of the property and Special Condition #7 requires the applicant to obtain Regional Water Quality Control Board approval for a wastewater treatment system in that location. This condition has not been satisfied. There is no evidence that this is not still a feasible alternative, or that the applicant has explored other alternative locations on its extensive property. Where there are feasible alternatives, there is no basis to reach conflict resolution.

Second, the conflict apparently presented by the applicant is not a true conflict of Chapter 3 policies. Section 30222, read as it was written, does not elevate visitor serving development to the level of habitat protection. Instead, that section compares development to other development, and states that "visitor-serving commercial recreational facilities" have priority over "private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry." This is a prioritized list; this particular type of development is more important than some development, but less important than other development. But the list is only a comparison of priorities among types of development. If this were a conflict between visitor-serving commercial development, on the one hand, and some private residential, general industrial or general commercial development, on the other, visitor-serving commercial development would prevail. But nothing about the language of §30222 suggests that visitor serving commercial development should have priority or prevail over the protection of environmentally sensitive habitat guaranteed by §30240. Applicants apparently believe than any development mentioned in Chapter 3 could be a predicate to conflict resolution. In fact, nothing in §30222 suggests that any development be built at all; it only compares the categories when development is to be built. Consequently, denial of this amendment would not be inconsistent with §30222. Rather, application of conflict resolution to this amendment would itself be inconsistent with §§30200 and 30007.5 of the Act.

Third, denial of the proposed amendment would not result in coastal zone effects inconsistent with another Chapter 3 policy. This is one of the standard criteria used by the Commission when conflict resolution is invoked. If denial of the project would not result in an effect on coastal resources that is inconsistent with a Chapter 3 policy, there is no conflict to resolve. The applicant is apparently asserting that failing to approve the Lawson's Center and the wastewater

treatment development in Area 6, as opposed keeping the Center in Area 2, and locating the wastewater system in the previously identified upland portion of the property, respectively, is inconsistent with §30222. The language of that section does not support this conclusion; nor do the findings of the Commission when it approved the original CDP. If the proposed locations for this development that were discussed with and approved by the Commission at the time of the initial approval of the CDP were not inconsistent with §30222 then, they are not inconsistent now. And if the applicant takes the position that those locations were inconsistent with Chapter 3 policies such as §30222 at that time, then the conclusion is inescapable that their designated and agreed upon location was part of the original "balancing" and conflict resolution that the Commission specifically discussed and that allowed for the otherwise illegal development in the original proposal to be approved. We re-emphasize three conclusions: first, the applicants did not object to Special Conditions #2, #4, and #21, which together specify and limit the development allowed and prohibited on the entire property; second, the permit is final, issued, exercised and fully binding upon the applicant; and third, the record clearly indicates that the Commission intended as part of its conflict resolution, to specify the full scope of development to be allowed over the entire property.

Nor, fourth, does the project proposal, if it were to be approved, result in tangible and necessary resource enhancement over the current state of the environment. The Commission should not have to long debate and consider whether offices and a convenience store are a resource enhancement over habitat for the endangered California red-legged frog, because this does not pass the "straight-face" test. For all of the above reasons, the Commission cannot find, consistent with its previous interpretation of §§30200 and 30007.5 of the Act, as well as with the plain language and logic of Chapter 3, that a conflict exists that requires resolution by the Commission, much less that it should be resolved by approving the amendment.

<u>The Commission Must Honor All Terms of the Existing Conflict Resolution</u>

But equally, if not more important is the idea that the Commission should not undo, but instead honor and uphold the balancing of conflicting policies and the final resolution of policy conflicts upon which it based its approval of the original

Lawson's Landing CDP. In its original decision in 2011 on the Lawson's permit application, the Commission considered the entire scope of what the applicants proposed to do on their property. Some Commissioners suggested not restricting future development in Area 6 because no development was proposed for that Area at that time, but the Commission specifically rejected that idea. Commissioner Bochco said: "looking at the whole property. That's our job. That's what we are supposed to do." Commissioner Blank had an exchange with the Applicant's representative directly to this point. He asked whether there was anything that the applicants counted on building that was not in the proposal before the Commission. "Is there anything the Applicants counted on building (in Areas 5-8)? The entire economic analysis is not based on any future development in any of those areas, is it?" The Applicant's representative responded "No." Following this exchange, the motion to limit future development in the ESHA in Areas 5-8, to agriculture and improvements to Sand Haul Road, was adopted and became Special Condition #21.

This Commission discussion must be considered in the context of what was approved in that permit. Contrary to the provisions of Chapter 3, development was approved, some temporarily and some permanently, both in ESHA and in wetlands, including most of the campgrounds. This was the basis of the conflict resolution. The Commission approved development in that permit that it could not otherwise approve, based upon the fact that denial of the project would require the removal of camping and other recreational facilities, and thus be contrary to the public access and recreation policies of the Act. The "balance" was created specifically by permanently protecting other areas of the Lawson's property from future development. Among those areas was Area 6, which was found to be ESHA and in which future development was specifically restricted. The Commission cannot undo in this amendment the "balance" created in the conflict resolution utilized to approve the original permit.

Conflict Resolution Is in the Nature of a Contract

The original approval of the CDP utilizing conflict resolution is in the nature of a contract with the Applicant, who was specifically asked to define the full scope of its development plans, and specifically stated that its future business plan did not depend upon development in Area 6. The applicant obtained approval of

otherwise illegal development, that had the effect of destroying both wetlands and ESHA, and in partial mitigation for this extraordinary benefit its potential future development was limited. The applicant did not object to the adoption of Special Condition #21, and did not subsequently challenge that and the other permit conditions.

This is not simply in the nature of a contract with the applicant. It is also a permanent commitment to the resources designated for protection. This was the Commission specifically saying: "OK. We've given up those resources over there, but we're going to protect these resources over here." But if the protected resources aren't really permanently protected, what "balance" has been made? What conflict has been resolved? If the commitments are not honored, then this becomes simply an ongoing process of development incrementally consuming critical coastal resources. The Commission cannot undo the approval it gave to the Applicant to place its development upon ESHA and wetland resources. This benefit is forever.

Nor should the Commission undo the protections it prescribed for the critical resources in other parts of the property, such as the CRLF corridor in Area 6. We can analyze and deliberate moving structural development or infrastructure to one or another location on the Lawson property, but the same cannot be said of frog habitat. The ponds, corridors and nearby uplands that sustain the frogs throughout their lifecycle cannot be moved around like pieces on a monopoly board. When the Commission resolves a conflict, it should stay resolved; it should be binding upon both "sides". Otherwise, as here, who speaks for the frogs?

There is another party to the contract, the people of the State of California, whose interests are represented by the Coastal Commission in its implementation of the Coastal Act. They deserve to have the agreement that was memorialized in the permit conditions, by which the applicant was allowed significant illegal development in portions of the property in which the Legislature had prohibited such development, and by which certain other portions of the property were required to be protected, honored in perpetuity. This is why your decision is so significant. If developers can come in with "new" benefits and create a new "conflict" in an area where habitat protections were prescribed as permanent in a previous conflict resolution, no habitat protection is safe. Developers will

continue to whittle away at the protections to secure new benefits. Only developers benefit from serial conflict resolution.

There Is No Relevant Precedent for Undoing Conflict Resolution

In conversations with your staff, they have suggested that there are previous cases where the Commission utilized conflict resolution to approve an amendment to a permit that had previously been approved pursuant to a conflict resolution process. Thus far, they have informed us of two such cases. Both of these cases involved a public agency undertaking a project for a public purpose. Both of them involved a very minor modification that was entirely contained within the scope of the originally approved project. In both of the cases the modification independently met the Commission's criteria for conflict resolution and was approvable on its own terms. And in neither of these cases did the subsequent approval undo the specific mitigation conditions that formed part of the original conflict resolution. None of these circumstances apply to the Lawson's amendment proposal. It is a private applicant undertaking a private business project. It is significant development that according to the Applicant's representative was not part of the original project; the development proposed here was, by the applicant's own representations, to be placed in other areas of the property. The amendment proposed does not independently meet the criteria for conflict resolution. And, most important, approval of the proposed amendment would undo mitigation conditions that formed an integral part of the original approval.

For all of these reasons, the proposed amendment cannot be approved, and we urge you to recommend that the Commission deny it.

Sincerely,

Ralph Faust

CC: Nancy Cave
Jeannine Manna
Chris Pederson
Catherine Caufield