

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94105-2219  
(415) 904-5260 OR (415) 904-5200 FAX (415) 904-5400  
WWW.COASTAL.CA.GOV



# Th18

## **NORTH CENTRAL COAST DISTRICT DEPUTY DIRECTOR'S REPORT**

*For the  
February 2016 Meeting of the California Coastal Commission*

February 08, 2016

**To:** Commissioners and Interested Parties  
**From:** Dan Carl, North Central Coast District Deputy Director

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the North Central Coast District Office for the February 2016 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the North Central Coast District.

**DE MINIMIS WAIVERS**

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 30624.7 of the California Coastal Act of 1976.

Applicant	Project Description	Project Location
2-15-0759-W San Francisco Public Utilities Commission, Attn: Barbara Palacios	The proposed project will include installation of approximately 400 feet of water distribution pipeline underneath Skyline Boulevard near the intersection of Lake Merced Boulevard, in San Francisco, as part of the larger Westside Recycled Water Project.	underneath Skyline Boulevard near the intersection of Lake Merced Boulevard, in San Francisco, as part of the larger Westside Recycled Water Project

**EMERGENCY PERMITS**

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13142 of the California Code of Regulations because the development is necessary to protect life and public property, or to maintain public services.

Applicant	Project Description	Project Location
<p><b>G-2-16-0011</b> AIMCO Esplanade Ave Apartments, LLC, Attn: Sean Finnegan</p>	<p>Import and install approximately 840 tons of rock and stack up to an additional 10 feet on top of the existing rock revetment between the storm drain slope to the south and the soil nail wall to the north; install an approximate 12-foot high soil nail wall above the rock revetment behind the top of the rock revetment. The soil nail wall will be sculpted and colored to blend with the adjacent bluff. The height of the soil nail wall will be extended up to the top of the failed bluff areas that extends to cover all exposed areas.</p>	<p>380 Esplanade Avenue, Pacifica, San Mateo County (APN(s): 009131010)</p>
<p><b>G-2-16-0007</b> Attn: Jason West</p>	<p>Install and place approximately 1,050 tons of 8 to 10 ton rock boulders to place at the toe of the bluff at a 2:1 slope, for a distance of about 180 feet, fronting the site. The work would be completed over a three day time period and would be conducted at minus tides. The work is required to stabilize the bluff face in order to protect a single-family home at 1112 Palmetto.</p>	<p>1112 Palmetto, Pacifica, San Mateo County</p>
<p><b>G-2-16-0014</b> Attn: Henry Fikkers/Keith Smith</p>	<p>Install a rock revetment wall by installing approximately 40 linear feet of revetment with approximately 350 tons of rock rip rap at a 2:1 slope. The work would be completed over a two day time period and would be conducted at minus tides. The work is required to stabilize the bluff face in order to protect a single-family home at 1070 Palmetto.</p>	<p>1070 Palmetto Ave, Pacifica, Ca 94044 (APN(s): 009074200)</p>
<p><b>G-2-16-0018</b> City of Half Moon Bay</p>	<p>Pacific side of Mirada Road, approx. 100-foot south of Medio Avenue. Work will be staged from existing Mirada Road. Work to include placement of supplemental rip-rap boulders at toe of bank which has failed due to high surf.</p>	<p>Pacific side of Mirada Road, approximately 100-foot south of Medio Avenue. Work will be staged from existing Mirada Road. Work to include placement of supplemental rip-rap boulders at toe of bank which has failed due to high surf.</p>

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**NOTICE OF PROPOSED PERMIT WAIVER**

**Date:** January 26, 2016  
**To:** All Interested Parties  
**From:** Nancy Cave, North Central Coast District Manager *NC*  
Kelsey Ducklow, Coastal Planner  
**Subject:** Coastal Development Permit (CDP) Waiver 2-15-0759-W  
Applicant: San Francisco Public Utilities Commission

**Proposed Development**

The proposed project will include installation of approximately 400 feet of water distribution pipeline underneath Skyline Boulevard near the intersection of Lake Merced Boulevard, in San Francisco, as part of the larger Westside Recycled Water Project.

**Executive Director's Waiver Determination**

Pursuant to Title 14, Section 13238 of the California Code of Regulations, and based on project plans and information submitted by the Applicant regarding the proposed development, the Executive Director of the California Coastal Commission hereby waives the requirement for a CDP for the following reasons:

The overall Westside Recycled Water project is designed to increase water delivery reliability, reduce earthquake vulnerability, and improve sustainability, among other objectives. The proposed project would be installed under an existing roadway and the potential for adverse impacts to public access and recreation, water quality, and scenic and visual resources will not be significant. Potential impacts to special-status species will be reduced through the use of best management practices and mitigation measures such as pre-construction surveys, the presence of biological monitors during pre-construction staging activities and periodically during construction, and the use of exclusion fences. Lastly, potential impacts to transportation and circulation will be insignificant, and relevant approvals from Caltrans have been received. In sum, the proposed project will maintain and enhance high-quality water service for San Francisco, will not adversely impact coastal resources, and thus is consistent with the Coastal Act.

**Coastal Commission Review Procedure**

This waiver is not valid until the waiver has been reported to the Coastal Commission. This waiver is proposed to be reported to the Commission on Thursday, February 11, 2016, in Morro Bay. If four Commissioners object to this waiver at that time, then the application shall be processed as a regular CDP application.

**If you have any questions about the proposal or wish to register an objection, please contact Kelsey Ducklow in the North Central Coast District office.**

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**EMERGENCY PERMIT**

Issue Date: January 21, 2016  
Emergency Permit No. G-2-16-0011

**APPLICANT:**

AIMCO Esplanade Ave Apartments, LLC Sean Finnegan, Agent for Applicant  
26 Executive Park, Irvine, CA 92614

**LOCATION OF EMERGENCY:**

380 ESPLANADE AVENUE, PACIFICA, SAN MATEO COUNTY (APN): 009131010

**EMERGENCY WORK:**

Import and install approximately 840 tons of rock and stack up to an additional 10 feet on top of the existing rock revetment between the storm drain slope to the south and the soil nail wall to the north; install an approximate 12-foot high soil nail wall above the rock revetment behind the top of the rock revetment. The soil nail wall will be sculpted and colored to blend with the adjacent bluff. The height of the soil nail wall will be extended up to the top of the failed bluff areas that extends to cover all exposed areas


This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of the previously installed revetment settling and rotating landward, coupled with El Nino and King Tide conditions, which has caused a failure and emergency situation, posing a threat to structures at 380 ESPLANADE AVENUE, PACIFICA, SAN MATEO COUNTY which requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Charles Lester  
Executive Director

  
By: Nancy Cave, District Manager

January 21, 2016

Emergency Permit No.: G-2-16-0011

cc: Local Planning Department

Enclosures: 1) Acceptance Form;  
2) Regular Permit Application Form

**CONDITIONS OF APPROVAL:**

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days (by February 5, 2016).
2. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.
3. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, email, phone numbers, etc.) including, at a minimum, a telephone number and email address that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, 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 contact information (e.g., name, 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. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit the record (of complaints/inquiries and actions taken in response) to the Executive Director.
4. Only that work specifically described in this permit and as more specifically described in the Commission's file for the Emergency CDP for the specific property listed above is authorized. The work permitted under this permit is the minimum necessary to address the emergency situation at hand and therefore, minimizing the extent of rock placed is strongly encouraged. Any additional work or maintenance to the structures installed pursuant to this permit requires separate authorization from the Executive Director. All emergency development shall be limited in scale and scope to that specifically identified in the Emergency Permit Application Form dated received in the Coastal Commission's North Central Coast District Office on January 21, 2012, except as revised in the following manner:

- a. All wood, concrete, steel, and other debris shall be removed entirely from the site and disposed of at a suitable off-site location outside the coastal zone.
  - b. Mitigation measures shall be implemented to ensure that all wood, concrete, steel, and other debris are appropriately contained and not allowed to be released into coastal waters.
5. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access. Construction materials, equipment or debris shall not be stored where it will or could potentially be subject to wave erosion and dispersion. Construction shall be conducted pursuant to typical best management practices such as:
- a. All construction areas shall be minimized and allow public recreational access along the beach and shall protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  - b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.
  - c. Grading of intertidal areas is prohibited.
  - d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
  - e. Any 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 the beach area by sunset each day that work occurs.
  - f. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
  - g. The construction site shall maintain good construction site housekeeping controls and procedure (e.g., clean up all leaks, drips, and other spills immediately; keep equipment 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 beach; etc.).





U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission.

12. Within 90 days of issuance of this Emergency Permit, or as extended by the Executive Director through correspondence, for good cause, the applicant shall either: (a) remove all of the materials placed or installed in connection with the emergency development authorized in this Permit and restore all affected areas to their prior condition after consultation with California Coastal Commission staff, and consistent with the Coastal Act. In some instances, a permit may be needed for removal; or (b) submit a complete follow-up Coastal Development Permit (CDP) that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations. If the Executive Director determines that the follow-up CDP application is incomplete and requests additional information, the applicant shall submit this additional information by a certain date, as established by the Executive Director. If such a follow-up CDP application is withdrawn by the applicant or is denied by the Commission, or if the follow-up CDP application remains incomplete for a period of 120 days after the Executive Director informs the applicant that the application is incomplete, the emergency-permitted development shall be removed and all affected areas restored to their prior condition, after consultation with CCC staff and consistent with the Coastal Act, within 30 days, subject to any regulatory approvals necessary for such removal. In some instances, a permit may be needed for removal.
13. Failure to a) submit a complete follow-up CDP Application that complies with Condition 8 above, or b) remove the emergency development and restore all affected areas to their prior condition after consultation with CCC staff, and consistent with the Coastal Act (if required by this Emergency Permit) by the date specified in this Emergency Permit<sup>1</sup>, or c) comply with all terms and conditions of the required follow-up CDP, including any deadlines identified therein, or d) remove the emergency-permitted development and restore all affected areas to their prior condition after consultation with CCC staff and consistent with the Coastal Act immediately upon denial of the required follow-up CDP<sup>2</sup> will constitute a knowing and intentional violation of the Coastal Act<sup>3</sup> and may result in formal enforcement action by the Commission or the Executive Director. This formal action could include a recordation of a Notice of Violation on the applicant's property; the issuance of a Cease and Desist Order and/or a Restoration Order; imposition of administrative penalties for violations involving public access; and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and

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<sup>1</sup> In some instances, a permit may also be required for removal.

<sup>2</sup> As noted above, in some instances, a permit may also be required for removal.

<sup>3</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

January 21, 2016

Emergency Permit No.: G-2-16-0011

other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

As noted in Condition 5 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Permittee wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's North Central Coast District Office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105, (415) 904-5260.

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## EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSISON  
North Central Coast District Office  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

RE: Emergency Permit No. G-2-16-0011

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the North Central Coast District Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular Coastal Development Permit is necessary for any permanent installation. I agree to complete the regular Coastal Development Permit application within 90 days of the date of the emergency permit or I will remove the emergency work in its entirety within 90 days of the date of the emergency permit (i.e., by April 20, 2016) Finally, I understand that my failure either to:

- a) submit a complete follow-up Coastal Development Permit (CDP) Application that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations by the date specified in this Emergency Permit, which date may be extended by the Executive Director for good cause, or
- b) Remove the emergency development and restore all affected areas to their prior condition after consultation with Coastal Commission staff as you identified consistent with the Coastal Act, will constitute a knowing and intentional violation of the Coastal Act and may result in formal enforcement action by the Commission or the Executive Director.

In some instances, a permit may be required for removal (if required by this Emergency Permit) by the date specified in this Emergency Permit. This formal action could include a recordation of a Notice of Violation on my property; the issuance of a Cease and Desist Order and/or Restoration Order; imposition of administrative penalties for violations involving public access, and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

\_\_\_\_\_  
Signature of Property Owner or  
Authorized Representative

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date of Signing

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**EMERGENCY PERMIT**

Issue Date: January 19, 2016  
Emergency Permit No. G-2-16-0007

**APPLICANT:**

Jason West

**LOCATION OF EMERGENCY:**

1112 PALMETTO, PACIFICA, CA 94044 (APN): 009-291-040

**EMERGENCY WORK PROPOSED:**

Install and place approximately 1,050 tons of 8 to 10 ton rock boulders to place at the toe of the bluff at a 2:1 slope, for a distance of about 180 feet, fronting the site. The work would be completed over a three day time period and would be conducted at minus tides. The work is required to stabilize the bluff face in order to protect a single-family home at 1112 Palmetto.

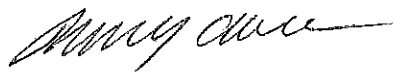
This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence of abnormally high wave action caused a loss of about 35-40 feet of bluff, over a short period of time, which resulted in parts of the existing structure protruding out from the bluff face, posing a threat to structures at 1112 PALMETTO, PACIFICA and requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Charles Lester  
Executive Director

  
By: Nancy Cave, District Manager

January 19, 2016

Emergency Permit No.: G-2-16-0007

cc: Local Planning Department

Enclosures: 1) Acceptance Form;  
2) Regular Permit Application Form

**CONDITIONS OF APPROVAL:**

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days of the date of this permit (by February 3, 2015).
2. Only that work specifically described in this permit and as more specifically described in the Commission's file for the Emergency CDP for the specific property listed above is authorized. Any additional work or maintenance to the structures installed pursuant to this permit requires separate authorization from the Executive Director.
3. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access. Construction materials, equipment or debris shall not be stored where it will or could potentially be subject to wave erosion and dispersion. Construction shall be conducted pursuant to typical best management practices such as:
  - a. All construction areas shall be minimized and allow public recreational access along the beach and shall protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  - b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.
  - c. Grading of intertidal areas is prohibited.
  - d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
  - e. Any 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 the beach area by sunset each day that work occurs.
  - f. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day!
  - g. The construction site shall maintain good construction site housekeeping controls and

- procedure (e.g., clean up all leaks, drips, and other spills immediately; keep equipment 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 beach; etc.).
- h. All accessways impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove any construction debris.
  - i. Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office immediately upon completion of construction and required restoration activities. If planning staff should identify additional reasonable restoration measures, such measures shall be implemented immediately.
4. The work authorized by this permit must be completed within 60 days of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.
  5. The applicant recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as offers to dedicate, easements, in-lieu fees, etc.) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves. In addition, any follow-up permit would account for and analyze the impacts of long-term sea level rise.
  6. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
  7. The Permittee shall submit construction site plans demonstrating the state of the site prior to the work authorized under this emergency permit and construction site plans illustrating the work completed as authorized under this emergency permit. Such site plans would show in cross-section the rock revetments installed, illustrating the length and slope of the revetment as built under the emergency permit.
  8. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to the City of Pacifica, California Department of Fish & Wildlife, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission.

9. Within ninety 90 days of issuance of this Emergency Permit, or as extended by the Executive Director through correspondence, for good cause, the applicant shall either: (a) remove all of the materials placed or installed in connection with the emergency development authorized in this Permit and restore all affected areas to their prior condition after consultation with California Coastal Commission staff, and consistent with the Coastal Act, and in some instances, a permit may be needed for removal; or (b) submit a complete follow-up Coastal Development Permit (CDP) that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations. If the Executive Director determines that the follow-up CDP application is incomplete and requests additional information, the applicant shall submit this additional information by a certain date, as established by the Executive Director. If such a follow-up CDP application is withdrawn by the applicant or is denied by the Commission, or if the follow-up CDP application remains incomplete for a period of 120 days after the Executive Director informs the applicant that the application is incomplete, the emergency-permitted development shall be removed and all affected areas restored to their prior condition, after consultation with CCC staff and consistent with the Coastal Act, within 30 days, subject to any regulatory approvals necessary for such removal. In some instances, a permit may be needed for removal.
10. Failure to a) submit a complete follow-up CDP Application that complies with Condition 9 above, or b) remove the emergency development and restore all affected areas to their prior condition after consultation with CCC staff, and consistent with the Coastal Act (if required by this Emergency Permit) by the date specified in this Emergency Permit<sup>1</sup>, or c) comply with all terms and conditions of the required follow-up CDP, including any deadlines identified therein, or d) remove the emergency-permitted development and restore all affected areas to their prior condition after consultation with CCC staff and consistent with the Coastal Act immediately upon denial of the required follow-up CDP<sup>2</sup> will constitute a knowing and intentional violation of the Coastal Act<sup>3</sup> and may result in formal enforcement action by the Commission or the Executive Director. This formal action could include a recordation of a Notice of Violation on the applicant's property; the issuance of a Cease and Desist Order and/or a Restoration Order; imposition of administrative penalties for violations involving public access; and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further,

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<sup>1</sup> In some instances, a permit may also be required for removal.

<sup>2</sup> As noted above, in some instances, a permit may also be required for removal.

<sup>3</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.



January 19, 2016

Emergency Permit No.: G-2-16-0007

failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

As noted in Condition 5 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Permittee wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's North Central Coast District Office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105, (415) 904-5260.



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**EMERGENCY PERMIT**

Issue Date: January 27, 2016  
Emergency Permit No. G-2-16-0014

**APPLICANT:**

Henry Fikkers/Keith Smith  
1070 Palmetto Ave, Pacifica, CA 94044

**LOCATION OF EMERGENCY:**

1070 PALMETTO AVE, PACIFICA (SAN MATEO COUNTY) (APN(s): 0090742000

**EMERGENCY WORK:**

Install a rock revetment wall by installing approximately 40 linear feet of revetment with approximately 350 tons of rock rip rap at a 2:1 slope. The work would be completed over a two day time period and would be conducted at minus tides. The work is required to stabilize the bluff face in order to protect a single-family home at 1070 Palmetto.

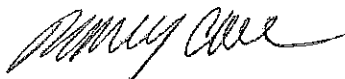
This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of abnormally high wave action caused a dramatic loss of bluff, over a short period of time, so that no fronting bluff remains and the bluff face is now at the edge of the house, posing a threat to the structure at 1070 PALMETTO AVE, PACIFICA (SAN MATEO COUNTY) and requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Charles Lester  
Executive Director

  
By: Nancy Cave, District Manager

January 27, 2016

Emergency Permit No.: G-2-16-0014

cc: Local Planning Department

Enclosures: 1) Acceptance Form;  
2) Regular Permit Application Form

**CONDITIONS OF APPROVAL:**

1. The enclosed Emergency Permit Acceptance form must be signed by the PROPERTY OWNER and returned to our office within 15 days of the date of this permit (by February 3, 2015).
2. Only that work specifically described in this permit and as more specifically described in the Commission's file for the Emergency CDP for the specific property listed above is authorized. Any additional work or maintenance to the structures installed pursuant to this permit requires separate authorization from the Executive Director.
3. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access. Construction materials, equipment or debris shall not be stored where it will or could potentially be subject to wave erosion and dispersion. Construction shall be conducted pursuant to typical best management practices such as:
  - a. All construction areas shall be minimized and allow public recreational access along the beach and shall protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  - b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.
  - c. Grading of intertidal areas is prohibited.
  - d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
  - e. Any 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 the beach area by sunset each day that work occurs.
  - f. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
  - g. The construction site shall maintain good construction site housekeeping controls and procedure (e.g., clean up all leaks, drips, and other spills immediately; keep equipment 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 beach; etc.).
- h. All accessways impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove any construction debris.
  - i. Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office immediately upon completion of construction and required restoration activities. If planning staff should identify additional reasonable restoration measures, such measures shall be implemented immediately.
4. The work authorized by this permit must be completed within 60 days of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.
  5. The applicant recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as offers to dedicate, easements, in-lieu fees, etc.) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves. In addition, any follow-up permit would account for and analyze the impacts of long-term sea level rise.
  6. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
  7. The Permittee shall submit construction site plans demonstrating the state of the site prior to the work authorized under this emergency permit and construction site plans illustrating the work completed as authorized under this emergency permit. Such site plans would show in cross-section the rock revetments installed, illustrating the length and slope of the revetment as built under the emergency permit.
  8. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to the City of Pacifica, California Department of Fish & Wildlife, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission.
  9. Within ninety 90 days of issuance of this Emergency Permit, or as extended by the Executive Director through correspondence, for good cause, the applicant shall either: (a) remove all of

the materials placed or installed in connection with the emergency development authorized in this Permit and restore all affected areas to their prior condition after consultation with California Coastal Commission staff, and consistent with the Coastal Act, and in some instances, a permit may be needed for removal; or (b) submit a complete follow-up Coastal Development Permit (CDP) that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations. If the Executive Director determines that the follow-up CDP application is incomplete and requests additional information, the applicant shall submit this additional information by a certain date, as established by the Executive Director. If such a follow-up CDP application is withdrawn by the applicant or is denied by the Commission, or if the follow-up CDP application remains incomplete for a period of 120 days after the Executive Director informs the applicant that the application is incomplete, the emergency-permitted development shall be removed and all affected areas restored to their prior condition, after consultation with CCC staff and consistent with the Coastal Act, within 30 days, subject to any regulatory approvals necessary for such removal. In some instances, a permit may be needed for removal.

10. Failure to a) submit a complete follow-up CDP Application that complies with Condition 9 above, or b) remove the emergency development and restore all affected areas to their prior condition after consultation with CCC staff, and consistent with the Coastal Act (if required by this Emergency Permit) by the date specified in this Emergency Permit<sup>1</sup>, or c) comply with all terms and conditions of the required follow-up CDP, including any deadlines identified therein, or d) remove the emergency-permitted development and restore all affected areas to their prior condition after consultation with CCC staff and consistent with the Coastal Act immediately upon denial of the required follow-up CDP<sup>2</sup> will constitute a knowing and intentional violation of the Coastal Act<sup>3</sup> and may result in formal enforcement action by the Commission or the Executive Director. This formal action could include a recordation of a Notice of Violation on the applicant's property; the issuance of a Cease and Desist Order and/or a Restoration Order; imposition of administrative penalties for violations involving public access; and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

As noted in Condition 5 above, the emergency development carried out under this ECDP is at the

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<sup>1</sup> In some instances, a permit may also be required for removal.

<sup>2</sup> As noted above, in some instances, a permit may also be required for removal.

<sup>3</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

January 27, 2016

Emergency Permit No.: G-2-16-0014

Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Permittee wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's North Central Coast District Office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105, (415) 904-5260.



# CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94105-2219  
PH (415) 904-5260 OR (415) 904-5200 FAX (415) 904-5400  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



## EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSISON  
North Central Coast District Office  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

RE: Emergency Permit No. G-2-16-0014

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the North Central Coast District Office Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular Coastal Development Permit is necessary for any permanent installation. I agree to complete the regular Coastal Development Permit application within 90 days of the date of the emergency permit or I will remove the emergency work in its entirety within 90 days of the date of the emergency permit (i.e., by April 26, 2016). Finally, I understand that my failure either to:

- a) submit a complete follow-up Coastal Development Permit (CDP) Application that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations by the date specified in this Emergency Permit, which date may be extended by the Executive Director for good cause, or
- b) Remove the emergency development and restore all affected areas to their prior condition after consultation with Coastal Commission staff as you identified consistent with the Coastal Act, will constitute a knowing and intentional violation of the Coastal Act and may result in formal enforcement action by the Commission or the Executive Director.

In some instances, a permit may be required for removal (if required by this Emergency Permit) by the date specified in this Emergency Permit. This formal action could include a recordation of a Notice of Violation on my property; the issuance of a Cease and Desist Order and/or Restoration Order; imposition of administrative penalties for violations involving public access, and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

\_\_\_\_\_  
Signature of Property Owner or  
Authorized Representative

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date of Signing

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94105-2219  
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**EMERGENCY PERMIT**

Issue Date: February 3, 2016  
Emergency Permit No. G-2-16-0018

**APPLICANT:**

City of Half Moon Bay  
501 Main Street, Half Moon Bay, CA

**LOCATION OF EMERGENCY:**

PACIFIC OCEAN SIDE OF MIRADA ROAD, APPROXIMATELY 100-FEET SOUTH OF MEDIO AVENUE. WORK WILL BE STAGED FROM EXISTING MIRADA ROAD. WORK TO INCLUDE PLACEMENT OF SUPPLEMENTAL RIP-RAP BOULDERS AT TOE OF BANK WHICH HAS FAILED DUE TO HIGH SURF.

**EMERGENCY WORK:**

Work to include placement of supplemental rip-rap boulders at toe of bank which has failed due to high surf. Work will occur on Pacific Ocean side of Mirada Road, approximately 100-foot south of Medio Avenue and will be staged from existing Mirada Road.

This letter constitutes written approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information that an unexpected occurrence in the form of high surf from El Nino and King Tide conditions has caused a 60-80 foot section of the bank to fail posing a threat to the existing Mirada Roadway, the coastal trail and pedestrian bridge and homes and businesses requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services pursuant to 14 Cal. Admin. Code Section 13009. The Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this Emergency Permit; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency work is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,

Charles Lester  
Executive Director

A handwritten signature in black ink, appearing to read "Nancy Cave".

By: Nancy Cave, District Manager

February 3, 2016

Emergency Permit No.: G-2-16-0018

cc: Local Planning Department

Enclosures: 1) Acceptance Form;  
2) Regular Permit Application Form

**CONDITIONS OF APPROVAL:**

1. The enclosed Emergency Permit Acceptance form must be signed by the APPLICANT and returned to our office within 15 days (by February 5, 2016).
2. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.
3. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, email, phone numbers, etc.) including, at a minimum, a telephone number and email address that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, 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 contact information (e.g., name, 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. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit the record (of complaints/inquiries and actions taken in response) to the Executive Director.
4. Only that work specifically described in this permit and as more specifically described in the Commission's file for the Emergency CDP for the specific property listed above is authorized. The work permitted under this permit is the minimum necessary to address the emergency situation at hand and therefore, minimizing the extent of rock placed is strongly encouraged. Any additional work or maintenance to the structures installed pursuant to this permit requires separate authorization from the Executive Director. All emergency development shall be limited in scale and scope to that specifically identified in the Emergency Permit Application Form dated received in the Coastal Commission's North Central Coast District Office on January 29, 2016, except as revised in the following manner:
  - a. All wood, concrete, steel, and other debris shall be removed entirely from the site and disposed of at a suitable off-site location outside the coastal zone.
  - b. Mitigation measures shall be implemented to ensure that all wood, concrete, steel, and other debris are appropriately contained and not allowed to be released into coastal waters.

5. All work shall take place in a time and manner to minimize any potential damages to any resources, including intertidal species, and to minimize impacts to public access. Construction materials, equipment or debris shall not be stored where it will or could potentially be subject to wave erosion and dispersion. Construction shall be conducted pursuant to typical best management practices such as:
- a. All construction areas shall be minimized and allow public recreational access along the beach and shall protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
  - b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.
  - c. Grading of intertidal areas is prohibited.
  - d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
  - e. Any 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 the beach area by sunset each day that work occurs.
  - f. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
  - g. The construction site shall maintain good construction site housekeeping controls and procedure (e.g., clean up all leaks, drips, and other spills immediately; keep equipment 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 beach; etc.).
  - h. All accessways impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove any construction debris.
  - i. Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office immediately upon completion of construction and required

restoration activities. If planning staff should identify additional reasonable restoration measures, such measures shall be implemented immediately.

6. The work authorized by this permit must be completed within 60 days of the date of this permit, which shall become null and void unless extended by the Executive Director for good cause.
7. The applicant recognizes that the emergency work is considered temporary and subject to removal unless and until a regular coastal development permit permanently authorizing the work is approved. A regular permit would be subject to all of the provisions of the California Coastal Act, would be conditioned accordingly, and may not allow for any further armoring or a different configuration of the revetment. These conditions may include provisions for public access (such as offers to dedicate, easements, in-lieu fees, etc.), camouflaging the soil nail wall installed, and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves. In addition, any follow-up permit would account for and analyze the impacts of long-term sea level rise.
8. In exercising this permit, the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
9. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit site plans and cross sections clearly identifying all development completed under this emergency authorization (comparing any previously permitted condition to both the emergency condition and to the post-work condition), and a narrative description of all emergency development activities undertaken pursuant to this emergency authorization. Photos showing the project site before the emergency (if available), during emergency project construction activities, and after the work authorized by this ECDP is complete, shall be provided with the site plans and cross sections.
10. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on the property
11. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies, including but not limited to the California Department of Fish & Wildlife, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the California State Lands Commission.
12. Within 90 days of issuance of this Emergency Permit, or as extended by the Executive Director through correspondence, for good cause, the applicant shall either: (a) remove all of

the materials placed or installed in connection with the emergency development authorized in this Permit and restore all affected areas to their prior condition after consultation with California Coastal Commission staff, and consistent with the Coastal Act. In some instances, a permit may be needed for removal; or (b) submit a complete follow-up Coastal Development Permit (CDP) that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations. If the Executive Director determines that the follow-up CDP application is incomplete and requests additional information, the applicant shall submit this additional information by a certain date, as established by the Executive Director. If such a follow-up CDP application is withdrawn by the applicant or is denied by the Commission, or if the follow-up CDP application remains incomplete for a period of 120 days after the Executive Director informs the applicant that the application is incomplete, the emergency-permitted development shall be removed and all affected areas restored to their prior condition, after consultation with CCC staff and consistent with the Coastal Act, within 30 days, subject to any regulatory approvals necessary for such removal. In some instances, a permit may be needed for removal.

13. Failure to a) submit a complete follow-up CDP Application that complies with Condition 8 above, or b) remove the emergency development and restore all affected areas to their prior condition after consultation with CCC staff, and consistent with the Coastal Act (if required by this Emergency Permit) by the date specified in this Emergency Permit<sup>1</sup>, or c) comply with all terms and conditions of the required follow-up CDP, including any deadlines identified therein, or d) remove the emergency-permitted development and restore all affected areas to their prior condition after consultation with CCC staff and consistent with the Coastal Act immediately upon denial of the required follow-up CDP<sup>2</sup> will constitute a knowing and intentional violation of the Coastal Act<sup>3</sup> and may result in formal enforcement action by the Commission or the Executive Director. This formal action could include a recordation of a Notice of Violation on the applicant's property; the issuance of a Cease and Desist Order and/or a Restoration Order; imposition of administrative penalties for violations involving public access; and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

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<sup>1</sup> In some instances, a permit may also be required for removal.

<sup>2</sup> As noted above, in some instances, a permit may also be required for removal.

<sup>3</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

February 3, 2016

Emergency Permit No.: G-2-16-0018

As noted in Conditions 7 and 8 above, the emergency development carried out under this ECDP is at the

Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Permittee wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's North Central Coast District Office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105, (415) 904-5260



# CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94105-2219  
PH (415) 904-5260 OR (415) 904-5200 FAX (415) 904-5400  
WWW.COASTAL.CA.GOV



## EMERGENCY PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSISON  
North Central Coast District Office  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

RE: Emergency Permit No. G-2-16-0018

INSTRUCTIONS: After reading the attached Emergency Permit, please sign this form and return to the North Central Coast District Office Office within 15 working days from the permit's date.

I hereby understand all of the conditions of the emergency permit being issued to me and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular Coastal Development Permit is necessary for any permanent installation. I agree to complete the regular Coastal Development Permit application within 90 days of the date of the emergency permit or I will remove the emergency work in its entirety within 90 days of the date of the emergency permit (i.e., by May 3, 2016). Finally, I understand that my failure either to:

- a) submit a complete follow-up Coastal Development Permit (CDP) Application that satisfies the requirements of Section 13056 of Title 14 of the California Code of Regulations by the date specified in this Emergency Permit, which date may be extended by the Executive Director for good cause, or
- b) Remove the emergency development and restore all affected areas to their prior condition after consultation with Coastal Commission staff as you identified consistent with the Coastal Act, will constitute a knowing and intentional violation of the Coastal Act and may result in formal enforcement action by the Commission or the Executive Director.

In some instances, a permit may be required for removal (if required by this Emergency Permit) by the date specified in this Emergency Permit. This formal action could include a recordation of a Notice of Violation on my property; the issuance of a Cease and Desist Order and/or Restoration Order; imposition of administrative penalties for violations involving public access, and/or a civil lawsuit, which may result in the imposition of monetary penalties, including daily penalties of up to \$15,000 per violation per day, and other applicable penalties and other relief pursuant to Chapter 9 of the Coastal Act. Further, failure to follow all the terms and conditions of this Emergency Permit will constitute a knowing and intentional Coastal Act violation.

Joseph Lo Coco  
Signature of Property Owner or  
Authorized Representative

Address: 1140 Furlong St  
Belmont CA 94002

Joseph Lo Coco  
Print Name

2/03/16  
Date of Signing

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
 45 FREMONT ST, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 VOICE (415) 904-5260  
 FAX (415) 904-5400  
 TDD (415) 597-5885

**Memorandum****February 9, 2016**

To: Commissioners and Interested Parties

FROM: Dan Carl, North Central Coast District Deputy Director  
 North Central Coast District

Re: *Additional Information for Commission Meeting*  
*Thursday, February 11, 2016*

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
Th20a	A-2-MAR-15-0074 Heidi Hjorth	Staff Report Addendum	
Th20a	A-2-MAR-15-0074 Heidi Hjorth	Correspondence, Richard S. Kohn	1-6
		Email, Stephen Lowry	7
		Correspondence by Appellant, Kathleen Hurley	8-12
		Comments from an audio record, Jeremy Tejirian	13-14
		Correspondence, Surfrider Foundation (Prom & Tye)	15-19

**CALIFORNIA COASTAL COMMISSION**

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45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105  
PHONE: (415) 904-5260  
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WEB: WWW.COASTAL.CA.GOV



# Th20a

**Prepared February 9, 2016 (for February 11, 2016 Hearing)**

**To:** Commissioners and Interested Persons  
**From:** Nancy Cave, North Central Coast District Manager  
Shannon Fiala, Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for Th20a**  
**Appeal Number A-2-MAR-15-0074 (Hjorth Residence)**

The purpose of this addendum is to correct the staff report procedural note, to address written comments received regarding the staff recommendation since the time the staff report was published, and to supplement proposed recommended findings as appropriate. Staff's recommendation remains the same, namely that the Commission determine that the project, as approved by Marin County, raises "no substantial issue."

Where applicable, additions to the staff report dated February 19, 2016 are shown in underline format, and deletions are shown in ~~strikeout~~ format.

**1. Replace the procedural note on pages 1-2 of the staff report with the following revised procedural note**

## ***PROCEDURAL NOTE***

*This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.*

**2. Response to Richard Kohn's Letter dated January 28, 2016**

Appellant Richard Kohn submitted a letter dated January 28, 2016 that raises a series of questions and issues related to the staff report and its analysis. Mr. Kohn's letter is organized in terms of six numbered issues, and this response follows Mr. Kohn's organization in that respect.

***Mr. Kohn's First Issue***

Mr. Kohn asserts that the fact that the staff report agrees with the Appellants that the proposed project is within the 100-year Easkoot Creek floodplain raises a significant issue. Staff respectfully disagrees, and explains its rationale in the staff report, including in reference to the five factors typically considered by the Commission in determining whether a local government's action raises a significant issue (see page 13 of the staff report). The fact that the project is located within the floodplain is central to staff's analysis overall, including because the LCP does not allow same. It is only through applying measures to avoid a taking that the County's action on this point does not raise a substantial issue. See staff report discussion on this issue on pages 11-12.

In addition, Mr. Kohn further asserts the staff report fails to address the effect of Section 22.06.10I of the County's Interim Zoning Ordinance as it relates to the project. Section 22.06.10I is not part of the certified Local Coastal Program (LCP). Per Coastal Act Section 30603(b)(1), grounds for an appeal are limited to allegations that the development does not conform to standards set forth in the certified LCP (or Coastal Act public access policies), and thus the effect of Section 22.06.10I in terms of this appeal is immaterial to the question in front of the Commission.

***Mr. Kohn's Second Issue***

Mr. Kohn asserts that the County granted a coastal development permit (CDP) in "violation" of the LCP, and this is tantamount to repealing provisions of the LCP. Again, staff disagrees. As discussed above, perhaps the most critical issue in this appeal case is the question of what to do about the fact that the project lies within the floodplain of Easkoot Creek when the LCP does not allow development within this floodplain. A CDP is only approvable here to avoid a potential taking. That is not an action in violation of the LCP. On the contrary, and as explained in the staff report (see discussion on page 11), the Coastal Act (and by extension the LCP, through which its authority extends) does not allow application of its policies in such way as to engender an unjust taking of private property. In its review of the project, the County acknowledged that a strict application of Section 22.56.130I to prohibit all development of the subject property could result in a regulatory takings, which could be avoided by approval of a project modified in such a way as to limit any such inconsistencies. The CDP was approved by the County on that basis. Thus the County's action did not violate the LCP, nor did it repeal or amend any provision of the LCP (see Exhibit 4, pages 2 and 3, and pages 8-9 of the staff report). All the stated LCP provisions still apply. It is just that in this particular context and for this particular fact set, potential takings concerns must also be countenanced, allowing for approval of a project designed to avoid same.

***Mr. Kohn's Third Issue***

Mr. Kohn asserts the staff report fails to discuss Coastal Act Section 65906. However, Section 65906 is part of the Government Code, not the Coastal Act, and does not form grounds for an appeal (again, see Coastal Act Section 30603(b)(1)). Further, his comments assert that the staff report fails to address County zoning Section 22.86.010 regarding variances. However, Section 22.86.010 is not part of the certified LCP, and likewise does not form grounds for appeal of the County's action.

***Mr. Kohn's Fourth Issue***

Mr. Kohn asserts that neither the County nor the Commission may decide constitutional takings issues. The Commission acknowledges it does not “decide” takings issues, but must consider them as required by Coastal Act Section 30010. Coastal Act Section 30010 also applies to local government (see discussion on pages 11-12 of the staff report). Regarding the applicant’s attorney’s letter promising to avoid litigation, the applicant was free to change her intentions if the County denied her application.

***Mr. Kohn's Fifth Issue***

Mr. Kohn asserts the County had no standards by which to evaluate a takings claim. The County, like the Commission, must follow the robust body of law regarding takings (see pages 11-12 of the staff report). In this case, it appears that the County did just that, and approved a reasonable residential use in a residentially developed area not unlike surrounding development. On this point, and to help provide additional clarity, the fourth sentence of the third full paragraph on page 12 of the staff report is modified as follows:

*In brief, the County determined the Applicant paid fair market value ~~of~~ (\$360,000 according to RealQuest) for a vacant lot in the residential neighborhood, a substantial investment that reasonably included the expectation of developing a home on the property where developed homes sell for an average of \$500,000.*

Mr. Kohn also makes a series of allegations regarding site biology and grading. Regarding the asserted biological impacts, as explained in the staff report on page 11, and in the County’s resolution, no sensitive species were found on the parcel. There is no indication that the site would provide for any such habitat, including as it is located in a fairly developed area that is actually located across a developed road from the creek itself. Regarding the septic system, Mr. Kohn alleges that the staff report grading calculation was in error, pointing to the County’s resolution on this point. Staff calculated the volume of grading using the dimensions provided on the project plans for the proposed 1,400 square foot home, and this calculation amounted to less than 150 cubic yards. Staff stands by this calculation. In addition, given that the County Board of Supervisors further reduced the size of the home by 300 square feet when it was approved, a change not reflected in the project plans, the amount of grading required for the reduced home may be even less than that amount (see page 10 of the staff report).

***Mr. Kohn's Eighth Issue***

Mr. Kohn asserts that the proposed project would be incompatible with character of the surrounding natural and built environment, inconsistent with LCP Section 22.56.130L(O)(3). However, the County-approved project is consistent with the allowable development standards for the C-R-2 zoning district, does not require variances for height or setbacks, and is modestly sized and comparable to other homes in the surrounding area. Staff believes that the project would be compatible with the area, and agrees with the County on this point (see pages 10-11 of the staff report).

**3. Response to Stephen and Erika Lowry’s Letter dated February 5, 2016**

In a letter dated February 5, 2016, Appellants Stephen and Erika Lowry assert that the proposed project would create a nuisance by creating increased run off. Technical staff reviewed plans and made the finding that the depth of flooding in the flood zone should not detectably change as a result of the development because the footprint of the proposed residence is small compared to the area of flooding (see page 12 of the staff report). As required by FEMA, the Applicant has designed the foundation of the residence to be above the base flood elevation. Further, a condition of the County's approval requires the Applicant to provide more details on the drainage and grading plan before issuance of a building permit. In short, it does not appear that the facts would support an argument that the County approved project would result in a nuisance.

#### **4. Precedence**

As discussed starting on staff report page 13, staff does not believe that the locally-approved project would create an adverse precedent for future interpretations of the County's LCP. In fact, this was a case specific evaluation of a proposed project at this site and under these circumstances, including the property's relationship to the creek itself, and the facts surrounding its acquisition. For further clarity on this point, additional data is added to the staff report on page 13 as follows:

*Third, the locally approved project would not create an adverse precedent for future interpretations of the County's LCP. While the proposed development was approved through a County takings analysis, this exception only applies to the new construction on this vacant lot and does not allow for new development on other vacant lots or the redevelopment of previously developed lots. Through Commission staff examination of property records, it is estimated that there are approximately 25 undeveloped parcels in the 100-year floodplain of Easkoot Creek. Eleven of these parcels are owned by public entities. Eight are owned by individuals who also own an adjacent developed parcel, where further development would likely not raise credible takings issues. Proposed new residential development on the remaining six parcels on vacant lots located within the 100-year floodplain could only be approved in the future through takings analysis specific to the parcel determining if the property owner had investment-backed expectations based upon the information known at the time of purchase, and could only be approved if the development is designed to be safe from flood hazards and otherwise consistent with the LCP, as was the case here. Fourth...*

Th 20a

Heidi Hjorth CDP application  
Item No. Th20a  
Comments by Richard Kohn  
**Opposed to NSI recommendation**

January 28, 2016

5 Ahab Drive  
Muir Beach, CA 94965

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Hurley, Lowry Appeal of Heidi Hjorth Application for CDP  
Appeal No. A-2-MAR-15-0074  
Hearing Date: February 11, 2016

Dear Commissioners,

### **Introduction**

The staff recommendation finding “no significant issues” (NSI) fails to address several key issues raised by the appellants; contains some significant factual errors; finds NSI even where it agrees with the appellants and disagrees with the county’s position as stated in the Resolution; decides certain issues like nuisance on the merits as though this was the *de novo* hearing; and reaches conclusions without an evidentiary basis in the record. In short, it does not stand up under scrutiny and should be overruled. I urge you to vote “NO” on the recommendation and consider the appeal *de novo*.

### **Appeal Procedures**

As the Staff Report states, “the grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP....” The standards that have been developed for deciding whether *de novo* review by the Commission is warranted are designed to ensure that the issues presented have significance beyond the particular case either legally or factually. The NSI process should not be used as a guise to decide the merits of an appeal without the benefit of a *de novo* hearing at which the parties can introduce any evidence that they deem relevant; the *de novo hearing* supersedes the county proceedings and wipes the slate clean. The issues raised by this appeal are well within the five criteria used by the Commission to decide the case after *de novo* review.

**First Appeal Issue.** The staff recommendation concedes that the proposed project is within the 100-year floodplain where development is prohibited by the LUP and the Interim Zoning Ordinance. This is contrary to the County's Resolution which claims that it is not, based on its interpretation of section 22.56.030L(2) of the Interim Zoning Ordinance. **Resolution 2015-134, Section I Par. X(B).** How can it be said that the appeal does not raise a significant issue of conformity with the LCP, particularly when the staff recommendation agrees with the appellants?

In this connection, the report *fails to address* the effect of Section 22.06.010I of the Interim Zoning Ordinance. Section 22.56.0130L(2) of the Interim Zoning Ordinance states "Development of permanent structures and other significant improvements shall not be permitted within the limits of the one-hundred year floodplain. Section 22.06.010I prohibits the county or its officers or employees from issuing any permits that would be in conflict with provisions of Title 22 of the Interim Zoning Ordinance. Any permit issued in violation of this provision is *null and void*. This provision is ministerial and allows for no discretion. *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.2d 626, 642-43.

The staff recommendation concedes that the Hjorth project lies within the limits of the 100-year floodplain of Easkoot Creek. As the staff states: "Mapping of the 100-year floodplain is intended to minimize exposure of life and property to flood hazards and adverse impacts on Easkoot Creek." Staff Recommendation p. 13. Section 22.56.0130L(2), applies the same prohibition to any floodplain in the county that is subject to the LCP. Despite the clear law and undisputed facts, the recommendation fails to address the First Issue of Appeal.

It would be impossible to conclude that application of this section fails to raise a substantial question. It shows that the county's decision was inconsistent with the LCP; it has a dramatic effect on coastal resources where development is permitted in hazardous areas; it has precedential value for future applications of the LCP, and raises a question of great importance beyond its application to development in Easkoot Creek.

**Second Appeal Issue.** The recommendation *fails to discuss* the appellants' argument that granting a CDP in violation of the LCP is tantamount to repealing provisions of the LCP in violation of law. Section 30514 of the Coastal Act states that "A certified LCP and all local implementing ordinances may be amended by a local government but no such amendment shall take effect until it has been certified by the California Coastal Commission." The effect of the County Resolution is to nullify the certified LCP provisions prohibiting development in the 100-year floodplain. Therefore, the proposed development cannot be "in conformity with the certified local coastal program" as required by Section 30604(b) of the Coastal Act.

Applying the criteria for deciding NSI, the County lacks legal support for its decision to grant a CDP; its decision has grave consequences on coastal resources beyond this particular case; and it obviously establishes a significant precedent if the county is allowed to amend its LCP without going through the Coastal Commission.



**Third Appeal Issue.** The report *fails to discuss* the appellants' argument that granting a CDP in these circumstances amounts to an *illegal variance* in violation of Section 65906 of the Coastal Act and Interim Zoning Ordinance Section 22.86.010I. The law permits variances in special circumstances where strict application of a law would result in dissimilar treatment under identical zoning classifications and hardship. But a variance cannot be granted where the zoning regulations expressly prohibit the use or activity in question. Here, of course, new development in the flood plain is absolutely prohibited. Whether or not the County called its action a variance, that is what it is: its intended purpose is to relieve the landowner of the strict application of the LCP. But under both the Coastal Act and the Interim Zoning Ordinance, a variance could not be granted under the circumstances of this case, even if it had been requested.<sup>1</sup>

This issue shows that the County had no legal support for its decision; that granting illegal variances has enormous adverse consequences for coastal resources; has adverse precedential effect on the future interpretation of the LCP; and raises issues far beyond this individual property.

**Fourth Appeal Issue.** As noted in footnote 4 of the staff recommendation, the issue of whether the local government or the Coastal Commission has the authority to adjudicate takings issues was considered by the Coastal Commission at its December 9, 2015 hearing. The Commission declined to rescind the staff's potential takings policy. Suffice it to say here, that neither local government nor the Coastal Commission is vested with authority to decide constitutional takings issues, potential or otherwise. That practice violates Art VI Sec 1 and Art. III Sec. 3 of the California Constitution. On December 30, 2015, the undersigned filed a petition for mandamus and complaint for declaratory judgment and injunctive relief in the Marin County Superior Court, CIV 1504651 to resolve the constitutional issue.

But even assuming that the County or Coastal Commission had such authority, the record in this case is insufficient to sustain a takings claim. First, the purported reason for making such an evaluation is to avoid potential litigation. See Staff Recommendation p. 12 second full paragraph. However, in this case, the applicant's attorney advised the county that his client had no intention of filing an inverse condemnation case. Letter from Rifkind Law Group dated November 16, 2015, p.3. No mention of this letter is made in the staff recommendation. That letter removes any basis for undertaking a takings evaluation. From the beginning, it was the county staff, not the applicant, that was driving the takings issue. By making an argument that even the applicant eschews, the county is acting as the applicant's surrogate. See **Seventh Appeal Issue**. The result is to undermine the legislative procedure for raising takings claims.

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<sup>1</sup> Any request for a variance must be made in the first instance to the Deputy Zoning Administrator . Interim Zoning Ord. Sec. 22.86.010I; 22.86.020I. The BOS has only appellate authority to consider a request for a variance. Section 22.86.025I. No such request was made to the DZA.

**Fifth Appeal Issue.** In contrast to the situation in *McAllister v. California Coastal Commission* (2008) 169 Cal.App.4<sup>th</sup> 912 (relied on by the staff at the December 9 hearing) the Marin County LCP does not mention Section 30010 or the criteria for evaluating takings. The certified LCP is the governing law when it comes to applying the Coastal Act. The County had no standards by which to evaluate any such claim, therefore its decision was arbitrary and capricious. While the Coastal Commission does have its own standards, set forth in the staff's "Takings Information" bulletin, the application of those standards to this project can only take place in a *de novo* hearing.

As the court in *McAllister* said, any deviation from strict application of zoning regulations must be supported by a detailed factual record. *Id.* pp. 940-41. One of the factual issues is whether the applicant paid fair market value for the vacant lot. The staff recommendation asserts that the applicant paid \$360,000 for the lot in an area where *developed homes* sell for an average of \$500,000. As far as I know, there is nothing in the record to substantiate either of these figures.<sup>2</sup> The County's Resolution only claimed that the applicant had paid fair market value with no details given.

If the Coastal Commission grants *de novo* review, the applicant would be required to submit twelve categories of information, including the date of purchase; the purchase price; the fair market value at the time of acquisition; how fair market value was derived, including any appraisals; title reports, litigation guarantees or similar documents; the owner's expenses over five years, and more.

What *McAllister* makes clear is that any conclusions must be backed up by explicitly stated facts, not supposition or conjecture.

The County Resolution 2015-134 is filled with conclusions unsupported by evidence. For example, it concludes that "no amount of due diligence would have informed the property owner that Policy IV(30) might apply to this property in a way to render the site undevelopable...." Resolution. P. 2 Section I Par. IX. It doesn't mention the fact that the prohibition had been on the books since 1980, or that the landowner is a real estate professional who claims expertise regarding title issues. Even the county's own proposed regulation governing taking claims would require the landowner to submit data showing fair market value, price paid, title documents and other evidence showing whether the price of the land was discounted due to restrictions. So would the Coastal Commission staff's "Takings Information" bulletin, as noted above. The uncritical acceptance of the county's selective use of information and supposition demonstrates why only a *de novo* hearing can bring out all the relevant considerations.

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<sup>2</sup> Given Marin County's high property values, the \$500,000 figure is hard to believe. \$1,500,000 would be more plausible. The Recommendation does not state when the lot was acquired or whether it is quoting median or average values, or the time frame. In any event, in comparing a vacant lot to home values, it is mixing apples and oranges.

Nor, even assuming that the county has the authority to adjudicate the issue of nuisance, are the staff conclusions adequately supported by fact. For example, the report makes no mention of how hardscaping the lot would exacerbate the flow of accumulated water. Again, this not an issue that can be resolved in the context of whether the appeal raises a significant issue: rather, it requires a *de novo* hearing in conjunction with all the other legal and factual issues that have been raised.

The staff report claims that the extent and scope of the county's approval of the proposed project is limited in impact, specifically to the floodplain of Easkoot Creek, which affects approximately 200 property owners." Staff Report p.13. Aside from the fact that this is no mean number, it is disingenuous to characterize the decision this way: the prohibition on development applies to any lots located within floodplains up and down the coast and eviscerates sections 22.06.010I and 22.86.010I, cited above.

On the issue of the biological site assessments, the Staff Report states that "no sensitive species were found on site." Staff Report p. 11. The shortcomings of the biological assessment has been well documented by the appellants, not the least of which being that the assessment was done during the dry season in one of the worst droughts in California's history. Not finding sensitive species under those conditions was a self-fulfilling prophesy.

A significant error is the statement with regard to the septic system that "The County-approved project requires less than 150 cubic yards of grading and excavation. This is below the LCP threshold that would require any additional measures..." Staff Report p. 10. In fact, the County Resolution states "The plans indicate approximate 200 cubic yards of fill..." Resolution p.9 Section III Par. 4(b). Projects in excess of 150 cubic yards must meet additional standards not considered in the staff report.

**Eighth Appeal Issue.** Even though Section 22.56.130L(0)(3) states that the "height, scale and design of new structures shall be compatible with the character of the surrounding natural and built environment..." neither the County Resolution nor the staff recommendation addresses the design of the residence. This is notable in its omission since the Deputy Zoning Administrator opined that if this was in a planned development, it would never pass design review.

### Conclusion

The Staff Report claims that "the locally approved project would not create an adverse precedent for future interpretations of the LCP." Staff Report p.11. How could that possibly be true? The far reaching consequences of this decision should be obvious. Only by ducking significant legal questions could the staff report reach that conclusion. Unfortunately, the staff report fails to address many issues raised by the appeal and is

clearly erroneous as to others. Properly considered, the appeal raises substantial questions within the parameters of the five criteria normally applied by the Commission. I urge you to vote "NO" on the proposed Resolution and schedule a *de novo* hearing on the appeal.

Respectfully submitted,

Richard S. Kohn

Th 2 Da

**From:** stephen lowry [mailto:lowryinc@att.net]  
**Sent:** Friday, February 05, 2016 3:01 PM  
**To:** Fiala, Shannon@Coastal  
**Cc:** Erikalowry@att.net; kjhurley77@aol.com  
**Subject:** Coastal Commioners Letter

Dear California Coast Commissioners,

I am thankful that we civilians have a group of people who oversee our incredible coast. As a local Californian I have been blessed to spend most of my life along the coasts of our beautiful state from Marin county's Tomales Bay to San Louis Obispo's Pismo Beach. I am a mother, an avid water woman, an environmentalist and am so blessed to be the steward and home owner of a small home between the ocean and Mt . Tamalpais in Stinson Beach Marin County California.

I write to you all today because I am concerned for the health and safety of the environment and properties in our neighborhood and my own home. We live in and on the Easkoot Creek floodplain in an old house from 1941. We do flood here and so much so that we are referred to as " ground zero " because of the flooding that occurs when one or more of these elements come together as they often do; high tides, high water table, the Easkoot Creek water from Mt. Tamalpais, The Bolinas Lagoon and the Pacific Ocean that bring extra water in at times of high surf. For this reason I suppose the C.CC. decided with locals to create a code in the Local Coastal Plan that there shall be no new construction in the Easkoot Creek Floodplain. And now in 2015 we have sea level rise acknowledgement.

The decisions the County and Coastal Commission staff report have made give me great concern. What happens when our environment , our home and the homes of others are threatened and are impacted by the change of this lot ? This project without drainage or flood analysis will create a community nuisance on my property,roads and surrounding properties; creating increased runoff within the Easkoot Creek environment. Who are we to make responsible ? The Coast Commission ? If the C.C.C. is under threat and feels it must go against it's own code then I ask that you do all that you can to be sure that the health and safety of our environment and properties are respected with whatever means you have.  
Please give us ( appellants ) the opportunity to have a de novo hearing.

With respect,  
Erika and Stephen Lowry

Th 20a

Heidi Hjorth CDP application

Item No. Th20a  
Comments by Appellant  
Kathleen Hurley  
**Opposed to NSI recommendation**  
**Request de novo hearing**

February 5, 2016

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105  
Via e-mail to Shannon.Fiala@coastal.ca.gov

Re: Hurley, Lowry Appeal of Heidi Hjorth Application for CDP  
Appeal No. A-2-MAR-15-0074  
Hearing Date: February 11, 2016

Dear Commissioners,

Thank you for your consideration of our Appeal. The mission statement of the CA Coastal Commission is one Appellants pointed to at every level of our Marin County appeal with belief that it is an important guiding framework and perspective. In that spirit we ask you to deny the staff recommendation of NSI and grant a de novo hearing so we may elaborate to the full commission on the important impacts of this decision that we believe have statewide implications.

Ruling in favor of new development on what is now clearly established as a floodplain lot within 100-feet of a blue-line stream is improper. It is significant in our first hearing before the Marin County that after hearing from several members of our community DZA Jeremy Tejrjian stated: ***I think what is in some ways most troublesome is the flooding that is occurring. It is just going to get worse.*** (See typed remarks of DZA hearing decision.)

Appellants worked diligently via the public appeal process to seek enforcement of the County LCP to protect the high-flood coastal area where we live. With considerable effort, Appellants proved to County staff and Commissioners that this floodplain property lies within 84 feet of the blue-line creek rather than 150 feet away as the Developer's expert reported. Appellants produced maps and documents and obtained statements from the Chief Planner of the Army Corps of Engineers to support the relevancy of FEMA flood maps after County staff took the initial position that the LCP-certified floodplain prohibition could not be applied either because of which governmental agency made the maps or because of possible confusion between the terms floodplain and floodway. When these arguments failed, the County fell back on the speculation of a possible

“takings” claim as a basis to ignore clear violation of the LCP. Appellants believe this underground policy is inappropriate to apply to this coastal permit process.

The Commission staff report before you pulls statements directly from the County Resolution 2015-134, which Appellants point out, is filled with assumptions, errors and omissions. To compound that problem, the Commission report introduces new information without sourcing or explaining it was introduced from outside the public hearing record. Examples of that are notations of the purchase price of the property that was never provided in the hearing at a figure of \$360k. This property is simply described by the County staff resolution as purchased at “fair market value” yet no sales figure or basis for that was provided or explained as part of the proceedings.

Second, there is a statement in the Commission staff report that the average value of a developed home in the neighborhood is \$500,000, a preposterous statement to those familiar with the area in which homes of the size proposed by the applicant could as likely sell for \$1.5 million. (See attached 2015 sales and online reported comparables). This low figure was apparently based on one sale, possibly a foreclosure, on Calle del Embarcadero. These figures, left unquestioned, imply County staff did basic work to collect and analyze the feasibility and likelihood of a takings lawsuit when they did not.

Another area of introduced error is the statement that the project will only use 150 yards or less of infill when the findings of the County show 200 yards. Staff admits this reduction of infill was based on “back of the envelope calculation” speculating that if the project size were reduced less infill would be needed. A factual finding of this type is something that could and should be more appropriately taken up in the de novo hearing that Appellants are seeking.

There is no “takings” analysis, no questioning of the applicant about her purchase or what she knew of the controversial history of the lot, nothing in the record about the price paid vs. value of the property, expected value after construction, or other details that would be required to prove a regulatory taking in a court of law. Additionally, the attorney for the developer said his client had no interest in a lawsuit. At another time, he said if there is going to be a policy of planned retreat for the area surrounding the lot (as noted by the current C-smart Sea Rise mapping) Applicant would just take a payment without going to court. This was said only after much was made by County staff about their “taking” concerns.

Though our project may be modest in size compared to many considered by the Commission, our appeal brings to light inconsistencies with the certified-LCP and raises the substantial question of to what extent and upon what facts the Coastal Commission affords discretion to counties to disregard requirements and prohibitions of a certified LCP.

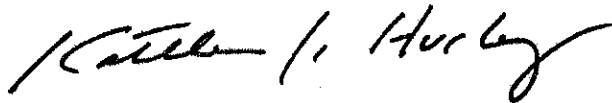
Applicants seek de novo review of the facts concerning violations of the LCP, which include Applicant’s incomplete plans that show encroachment on environmental setbacks, failure to provide drainage plans for protecting lower lying properties from

increased flood damage and the nuisance impacts on access roads, the ocean and creek side environment and community. The recommendation of NSI by Commission staff is very troubling in view of community and environmental concerns. For 30 or more years local community members thought this was an unbuildable lot due to the high water table. Now to be considering new construction in a known area of annual flooding currently recommended for a policy of planned retreat seems contradictory to public interest and to the mission statement of the Coastal Commission.

As for related challenges to the Commission staff report, we incorporate by reference letter/briefs in support of our appeal submitted by Richard Kohn and by the national and local chapters of Surfrider Foundation opposing the NSI recommendation before you.

Thank you for your consideration of our appeal.

Sincerely,

A handwritten signature in black ink that reads "Kathleen P. Hurley". The signature is written in a cursive style with a large, sweeping "H" and "y".

Kathleen Hurley, Appellant

Attachments:

Stinson Beach sales figures  
And online comparables

Typed statement of the DZA hearing decision for Hjorth  
CDP Application for vacant lot: APN 195-132-03



## Stinson Beach Real Estate Sales 2015

<i>Single Family Homes</i>			<i>BDR</i>	<i>Bath</i>
17-Jan	208 Seadrift Road	\$4,837,600	4	4
23-Jan	276 Seadrift Road	\$6,727,500	3	3
26-Jan	182 Seadrift Road	\$5,940,000	4	4
19-Feb	269 Seadrift Road	\$1,960,900	2	3
6-Mar	106 Buena Vista	\$890,000	1	1
15-Mar	171 Dipsea Road	\$1,900,000	2	3
3-Apr	24 Calle del Pinos	\$1,490,000	3	2
15-Apr	60 Puente Rizal	\$4,428,995	4	4
6-May	415 Calle d Mar	\$2,000,000	2	2
12-May	19 Calle del Pradero	\$1,625,000	2	1
5-Jun	5 Calle del Sierra	\$2,450,000	6	5
12-Jun	129 Dipsea Road	\$2,037,750	3	2
16-Jun	31 Dipsea Road	\$2,667,500	3	2 off market
31-Aug	18 Calle del Pradero	\$1,050,000	1	1 off market
14-Sep	310 Seadrift Road	\$4,500,000	3	2 off market
1-Oct	9 Jose Patio	\$3,900,000	3	3
6-Oct	6 Alameda Patio	\$975,000	1	1
21-Oct	205 Dipsea Road	\$2,100,000	3	2 off market
14-Oct	30 Laurel Avenue	\$800,000	1	1
15-Oct	235 Calle del Mar	\$1,455,000	1	2
19-Nov	215 Seadrif Road	\$2,750,000	3	2 off market
4-Dec	83 Dipsea Road	\$2,725,000	4	2
4-Dec	13 Walla Vista	\$5,300,000	3	3
4-Dec	151 Buena Vista	\$625,000	2	1
15-Dec	490 Calle del Mar	\$1,525,000	3	2
24-Dec	103 Dipsea Road	\$2,600,000	3	2
<i>LOTS</i>			<i>approx sq ft</i>	
12-Aug	254 Seadrift Road	\$3,510,000		7501
28-Aug	263 Seadrift Road	\$1,150,000		7501
28-Aug	265 Seadrift Road	\$1,150,000		8499
22-Oct	217 Seadrift Road	\$1,250,000		23100
22-Dec	254 Seadrift Road	\$2,703,000		7501 off market

### Oceanic Realty

3470 Shoreline Highway, Stinson Beach, CA 94970

415-868-071

[www.oceanicrealty.com](http://www.oceanicrealty.com)

BRE#01258888



**235 Calle Del Mar**  
Stinson Beach, CA, 94970

Estimated Value  
**\$1,952,664**

Square Footage: **1,338 sq ft**  
Lot Size: **5,460 sq ft**  
Bedrooms: **3**  
Bathrooms: **2.0**

Year Built: **1915**



**19 Calle Del Pradero**  
Stinson Beach, CA, 94970

Estimated Value  
**\$1,685,651**

Square Footage: **1,416 sq ft**  
Lot Size: **4,800 sq ft**  
Bedrooms: **2**  
Bathrooms: **1.0**

Year Built: **1914**

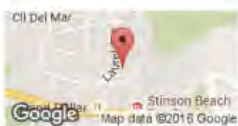


**18 Calle Del Pradero**  
Stinson Beach, CA, 94970

Estimated Value  
**\$1,493,526**

Square Footage: **531 sq ft**  
Lot Size: **4,700 sq ft**  
Bedrooms: **1**  
Bathrooms: **—**

Year Built: **1961**



**30 Laurel Ave**  
Stinson Beach, CA, 94970

Estimated Value  
**\$1,444,318**

Square Footage: **1,154 sq ft**  
Lot Size: **4,356 sq ft**  
Bedrooms: **1**  
Bathrooms: **1.0**

Year Built: **1914**

Th 20a

**Decision of Marin County Hearing Officer DZA Jeremy Tejirian:**

Comments typed from the audio record of DZA hearing (Hjorth) posted online August 28, 2014 pertaining to Lot on Calle del Embarcadero (#4) APN 195-132-03

That's a lot to think about.

If someone tells you a legal lot is not buildable you should take that with a grain of salt.

For a number of different comments today, a number with similar themes. One is the theme of what the water department decision was and as you are aware we are not part of that decision-making process. It is interesting you have a little bit of background. Technology changes and I am not sure what.... But I have confidence they acted with integrity, which is what I have always seen in the past.

There is also an issue raised about the hydrological situation in general in looking at the maps and being out there myself I don't believe this project and this property is within 100 feet of the top of the bank of the creek or within 50 feet of the riparian vegetation.

It's a dynamic area, of course, but it is also developed and that's probably one of the situations that is affecting the natural growth of the vegetation out there. I think what is in some ways most troublesome is the flooding that is occurring. It is just going to get worse. With the sea level rise increases flooding perhaps not from Easkoot Creek but certainly from the ocean side. As I said in the previous hearing a lot of these older cottages are going to need to be addressed somehow and I hope it is by raising the older cottages and keeping the existing kind of character of the neighborhood.

But in terms of the flooding, these folks are building in conformity to all the codes and that is not to say it is going to address the flooding outside their particular property but there is no evidence that it is going to make it worse, either. And flooding in that area is going to be an increasingly serious problem and just personally I think it is something the community needs to figure out a way of addressing from a community standpoint rather than property by property. I think the county is taking some first steps in terms of mapping those areas which are most prone to flooding. And those maps from what I can tell are actually quite accurate. They are referenced in some of the documents here and in my experience out in that area indicates they are accurate. The maps show the flooding from Easkoot creek. And there is of course flooding from the ocean. I don't think they show the convergence flooding but they do show flooding from Easkoot Creek.

5:20 mark There is a code section in our woefully out of date coastal zoning code from 1981 which says development of permanent structures (this is section 22.56.130 under finding L Geologic Hazardous Areas number 2) says that floodplain development of coastal project applications adjacent to streams that periodically flood shall include a site plan that shall identify a flood plan as described by Army Corps of Engineers. Developments of structures and other significant improvements shall not be permitted within the 100-year flood plain. It's very restrictive. As most of you probably know, if

the government says you cannot develop your property it is a taking which the government must compensate by paying fair market value on the property. We are in the process and have been in the process for a number of years of updating this code. Because there are so many sanctions like this that are really out of date. This cannot be applied because the army corps of engineers does not define or map in any other way the 100-year floodplain. FEMA defines flood plains and they are looking mainly at the ocean in this area so I think flooding is a very serious problem. The applicant has come up with an engineering solution to that problem and I think that is all we can require in my view unfortunately.

There are a number of design issues I think. I really appreciate the change in the design that the applicant has offered. Even with that change I think this is going to adversely affect the private views of the next door neighbor I think it is going to adversely affect the privacy of another next door neighbor. Architectural character is something that is subjective but it is more typical that you would find a smaller kind of cabins and that kind of thing in the neighborhood so that is another issue. In my view, this neighborhood is not, unfortunately, what we would call a planned zoning district. In other words, in conventional districts as long as you meet certain standards of height, floor area ratio, set backs then you are allowed to build whatever architectural style you want. Now in this case, it is in the coastal zone and the coastal zone is really state law that provides lots of protections but not necessarily for local neighborhood. It provides protections for visitors, for agriculture, for natural resources, but when it talks about views it really talks about views from public locations toward the resources not private views. This would never make it through design review but I am not issuing design review findings today.

What I am issuing is a coastal permit approval. And based upon the Coastal Permit Findings, there is every reason to approve the project with some reluctance on my part. You have done a good job to address the issues and I am certainly very sympathetic to all the issues that have been brought up but this is a conventionally zoned district and it is something we need to address just with the findings of the Coastal permit. (background voice asking to speak from audience) I am closed to the public comment portion of the hearing. You can talk to Scott about it afterwards.

I would like to have a condition of approval added to the conditions which requires divisions in the plan for the building permit for landscape inspection prior to final approval of the building permit final inspection of the building permit to make sure the plantings around the perimeter has been installed accurately and correctly. With those changes I am going to approve the project. This decision is not necessarily final. It can be appealed to the Planning Commission within five business days from today which I am sure it will be. Thank you for all your comments. I appreciate you coming out today.

Th20a



**SURFRIDER**  
FOUNDATION

February 2016 Agenda  
Meeting of February 11, 2016  
Agenda Item No. 20(a)

February 8, 2016

California Coastal Commission  
c/o Shannon Fiala, Coastal Planner  
VIA EMAIL [Shannon.Fiala@coastal.ca.gov](mailto:Shannon.Fiala@coastal.ca.gov)

**Re: Comments on Appeal No. A-2-MAR-15-0074 (Hjorth, Marin Co.)**

Dear Honorable Commissioners and Commission Staff,

On behalf of Surfrider Foundation, thank you for your time in considering these comments regarding Appeal Number A-2-MAR-15-0074, on Coastal Development Permit (CDP) 2014-0051, for the construction of a 1,100 square foot residence and 300 square foot attached garage on the Hjorth property (the "Project"), which is item number Th20a, on the Coastal Commission's agenda for February 11, 2016.

I am writing on behalf of Surfrider Foundation's Marin County Chapter, which has been active in the local permitting proceedings before the Marin County Board of Supervisors and the Planning Division of the Marin County Community Development Agency.

Respectfully, Surfrider Foundation disagrees with staff's recommendation of finding that the appeal raises no substantial issue. As explained below, primarily, given the Project's violation of Marin County's Local Coastal Program (LCP), the Commission's own test requires finding that the appeal raises a substantial issue, warranting a *de novo* hearing. Further, even if the County or the Commission could consider the takings issue or grant a variance which is not available at law to avoid a purported takings, which is questionable, case law requires that support be developed and articulated in the record and that explicit findings support a determination with respect to takings. This has not been done.

### **The Appeal Raises a Substantial Issue**

Under the Coastal Act and the Commission's regulations, the Commission *shall* hear an appeal, via a *de novo* hearing, unless the Commission finds that *no* substantial issue exists with respect to the grounds on which an appeal has been filed, which may include that the development does not conform to the standards set forth in the

certified LCP or the Coastal Act's public access policies. (Cal. Pub. Res. Code §§ 30603, 30625; 14 Cal. Code Regs. § 13321.)

Specifically, Cal. Code of Regs. Section 13321 provides that unless the commission finds that the appeal raises no substantial issue in accordance with the requirements of Public Resources Code Section 30625(b) and Section 13115(a) and (c) of the Commission's regulations, the commission shall conduct a *de novo* consideration of the application in accordance with the Commission's regulatory procedures. 14 Cal. Code of Regs. Section 13115(a) requires a determination as to whether the appeal raises a "significant question."

As the staff report points out, in determining whether there is a substantial issue as to compliance with an LCP or public access policies, the Commission generally considers: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and public access policies of the Coastal Act, (2) the extent and scope of the development as approved or denied by the local government, (3) the significance of coastal resources affected by the decision, (4) the precedential value of the local government's decision for future interpretation of its LCP, and (5) whether the appeal raises only local issues, or those of regional or statewide significance.

Additionally, as the Commission's own "Frequently Asked Questions" guide on the Commission's appeals process explains, "It is important to note that the Coastal Act presumes that an appeal raises a substantial issue."<sup>1</sup>

As to the first factor, there is no legal support for the County's determination that the Project is consistent with the certified LCP or that a variance could be granted. As recognized in the staff report, there is no factual question that the Project is located in the 100 year floodplain of Easkoot Creek, and thus the Project violates Marin County's LCP, Policy 30, which prohibits development in the 100 year floodplain. The staff report even finds as much, and yet, appears to gloss over this in concluding there is no substantial issue raised by the appeal.<sup>2</sup>

Moreover, there is no variance available at law to exempt the Project's compliance with LCP Policy 30. Instead, the Marin County Municipal Code (MCMC) provides only limited authority to grant variances, and variances can only be granted to this

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<sup>1</sup> See <http://www.coastal.ca.gov/cdp/appeals-faq.pdf>, at p. 3.

<sup>2</sup> There is not even a sub-conclusion, as there is with respect to the other LCP policies discussed on page 11 of the staff report, that there is no substantial issue raised with respect to the LCP floodplain policy (e.g., "Thus, the appeal does not raise substantial issue of LCP conformance with respect to the Marin LCP policies related to septic system standards [...]". It just seems to acknowledge that there is an inconsistency, and then move on. However, this inconsistency is exactly what raises a substantial issue.

limited extent “and no further.” (MCMC § 22.86.0101) In particular, a variance or adjustment to the requirements of any C district (the Coastal Zone), shall be granted *only* when, in addition to the other requirements of MCMC Chapter 22.86, the variance or adjustment is found *consistent with* the requirements of 22.56[I] *and the policies, goals, and objectives of the LCP*. The Project violates LCP Policy 30. Similarly, the Project is inconsistent with MCMC Section 22.56.130I which prohibits development of permanent structures within the floodplain. Therefore, pursuant to MCMC Section 22.86.0101, a variance cannot be granted for this Project, which is within the C District.<sup>3</sup>

Thus, there is no legal or factual support for determining that the Project is consistent with a certified LCP, and there is not even a theoretical legal basis for granting a variance. As previous Commission determinations illustrate, this naturally requires finding that a substantial issue has been raised. *See, e.g.,* The September 2004 Commission Staff Report for the project at issue in *McAllister v. California Coastal Commission*, where any time it was determined that the project was inconsistent with an LCP policy, staff recognized that a separate substantial issue had been raised.<sup>4</sup>

### **The Record Does Not Support Exempting Compliance with the LCP Based on Takings**

Further, even if the County or the Commission could consider the issue of whether a permit denial would constitute a takings, or grant a variance which is not available at law to avoid a purported takings, which are questionable, case law requires that support be developed and articulated in the record and that explicit findings support a determination with respect to takings. *See, e.g., McAllister v. California Coastal Commission*, 169 Cal.App.4<sup>th</sup> 912 (Cal. Ct. App. 2009) (the Commission has a duty to support its decisions with respect to granting or denying permits with explicit findings, and to make express findings where it is excusing strict compliance with a development restriction to avoid a taking if that is its reason for approving a project.); *Sierra Club v. Calif. Coastal Commission*, 22 Cal. App. 4<sup>th</sup> 1158 (1994) (where a taking concern is relied upon, it must be developed in the record, and the takings concerns articulated in the record, such as high investment expectations or real threatened takings claims, in order to support such a decision). Further, it is abuse of discretion where an administrative order or decision is not supported by the findings, or the findings are not supported the evidence. (Cal. Code of Civ. Proc. § 1094.5.)

Here, the County failed to make the necessary findings of fact to support its takings analysis, and the Commission’s staff report similarly fails to meet this requirement. Similarly, what conclusory findings there are, are not supported by adequate

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<sup>3</sup> What’s more, the applicant has not even sought a variance, which would be required pursuant to MCMC § 22.86.020I.

<sup>4</sup> *See* <http://documents.coastal.ca.gov/reports/2004/9/W10a-9-2004.pdf>

evidence. The staff report appears to assume that the facts upon which the County relied are adequate, and yet these are questionable. For example, the staff report provides that the County determined the Applicant paid fair market value of \$360,000 for the vacant lot. The staff report provides that the developed homes in the area sell for an "average of \$500,000." However, there are no actual facts or data presented or cited which support these findings, and these figures seem under value.<sup>5</sup> Without sufficient facts of this nature, it's impossible to make any credible findings as to investment-backed expectations.

Additionally, the staff report does not adequately consider the possibility, as appellants have argued, that the Project will constitute a nuisance. Where a takings may otherwise result, an agency can avoid liability for just compensation if it can demonstrate that the proposed uses are prohibited by the laws of nuisance or other preexisting limitations on the use of the property. *See Lucas v. South Carolina Coastal Coun.*, 112 S. Ct. 2886 (1992).

Here, neither the County nor the Commission have made an adequate inquiry into whether the Project would constitute a nuisance, and have not shown any evidence supporting that it would not. Instead, this Project would be constructed squarely within a 100 year floodplain, in an area of Stinson Beach which is already consistently subject to serious tidally influenced flooding. Its development would increase stormwater runoff and exacerbate flooding impacts in the area. Its wastewater system will foreseeably be under water for a significant part of the year, which adds to the cumulative risk of potential water pollution. And yet, there has not been a Drainage Plan created for the Project or any other analysis conducted which demonstrates that the Project will not exacerbate flooding or otherwise pose a nuisance. What's more, pursuant to MCMC Section 22.122.030, "[a]ny structure or use which is established, operated, erected, moved, altered, enlarged, or maintained, contrary to provisions of this Development Code or any applicable condition of approval, is hereby declared to be unlawful and a public nuisance [...]." Therefore, according to the MCMC, given that the Project would violate MCMC Section 22.56.130I and cannot qualify for any variances or conditions which would correct that violation, the Project would constitute a nuisance.

In short, there are not adequate findings in the record to support the County or the Commission's decision, and there is not sufficient evidence to support the purported findings, because the nuisance issue has not been adequately explored. Therefore, the takings issue has not been sufficiently developed or articulated in the record.

## **Conclusion**

For the foregoing reasons, respectfully the Commission must determine that a substantial issue has been raised in the appeal, and hold a *de novo* hearing on the

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<sup>5</sup> For example, a search on Redfin.com shows other undeveloped lots for sale in Stinson Beach for approximately \$1,150,000 (as of 2/5/2016).



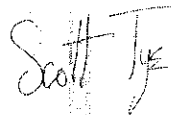
application. Additionally, the record must be fully and adequately developed in order to appropriately consider all relevant issues, including facts with respect to investment backed expectations, and nuisance, including how the Project will affect drainage and exacerbate flooding in this already highly flood-prone area, such that the Commission complies with Cal. Code of Civ. Proc. § 1094.5.

Thank you for your time and consideration.

Sincerely,



Staley Prom, Esq.  
Legal Associate  
Surfrider Foundation



Scott Tye  
Chairperson, Marin County Chapter  
Surfrider Foundation