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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...*

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Appeal Filed:	10/22/2015
49th Day:	Waived
Staff:	S. Fiala - SF
Staff Report:	1/22/2016
Hearing Date:	2/11/2016

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number:	**A-2-MAR-15-0074**
Applicant:	**Heidi Hjorth**
Appellants:	Kathleen Hurley and Erika Lowry
Local Government:	Marin County
Local Decision:	Coastal development permit number 2014-0051 approved with conditions by the Marin County Board of Supervisors on November 17, 2015.
Location:	4 Calle del Embarcadero (APN 195-132-03), Stinson Beach, Marin County.
Project Description:	Construction of a 1,100 square-foot residence and 300 square-foot attached garage.
Staff Recommendation:	No Substantial Issue

PROCEDURAL NOTE

The Commission will not take testimony on a "substantial issue" recommendation unless at least three Commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally, and at the discretion of the Chair, limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

On November 17, 2015, Marin County approved a coastal development permit (CDP) to construct a new, 1,100 square-foot residence with a 300 square-foot attached garage at 4 Calle del Embarcadero in Stinson Beach, Marin County. The subject parcel is zoned to allow residential use as one or two-family residences (C-R-2), and is surrounded by other residences and associated residential uses.

The Appellants assert that the County-approved project is inconsistent with Marin County Local Coastal Program (LCP) policies related to septic system standards, grading and excavation, stream and wetland resource protection, wildlife habitat protection, floodplain development hazards, visual resources and community character, and with respect to regulatory takings claims. Specifically, the Appellants contend the approved development is inconsistent with the policies of the Marin County certified LCP because: it is located in the one hundred-year floodplain of Easkoot Creek and within the 100-foot stream protection buffer for Easkoot Creek; the septic system approval, grading and drainage plans, and wildlife habitat assessments are inadequate; the design of the structure is atypical of the design of surrounding residences; that the Marin LCP does not include policies for analyzing regulatory takings and that the County lacks the authority to approve regulatory takings claims. Further, the Appellants assert that the County failed to make findings of fact, specifically that the Applicant was aware that the lot was unbuildable; the Applicant did not pay fair market value; and that the County acted as a surrogate for the Applicant in initiating the takings claim.

The Marin County LCP states that the development of permanent structures and other significant improvements are not permitted in the 100-year floodplain of Easkoot Creek. The 100-year floodplain of Easkoot Creek has been modeled by Marin County Flood Control District, which indicates that the subject parcel is in the Easkoot Creek floodplain. Further, the subject parcel is located in the Federal Emergency Management Agency (FEMA)'s Special Flood Hazard Area Zone AO, meaning that the subject parcel is at risk of up to three feet of flooding during an one hundred-year storm (i.e., a storm with a 1% annual chance of occurring). Thus, the proposed construction of a permanent single-family residence on the subject parcel would not be consistent with the Marin LCP floodplain development policy. However, the parcel is zoned for residential uses, and Commission staff concurs with the County's assessment that denial of the proposed project could lead to a potential regulatory taking, and that approval of a project

modified to limit coastal resource impacts and LCP inconsistencies is appropriate in this case to avoid same. In its approval, the Marin County Board of Supervisors reduced the area of the proposed residence from 1,400 square feet to 1,100 square feet, and reduced the area of the attached garage from 535 square feet to 300 square feet. The County findings state that 1,200 square feet is the average area of residences in the surrounding neighborhood, and that this reduction achieves roughly that. The County-approved residence also includes appropriate mitigations to address potential flood water concerns (through minor elevation above FEMA minimum flood elevations, and measures to allow potential flood waters to pass through the site). As such, the County-approved project appears to have appropriately minimized these concerns and LCP inconsistencies to the degree feasible in this case.

With respect to the County-approved project's consistency with other LCP policies, staff concurs with the County's findings. The County-approved project is consistent with the LCP development standards for the C-R-2 district and the requirements regarding septic systems and grading. With respect to sensitive habitats, the subject parcel is a vacant lot that supports ruderal vegetation surrounded by residential land uses. The project was modified to be located outside the LCP-required 100-foot stream buffer area for Easkoot Creek. The County-approved project does not require variances for height or setbacks and is modestly sized. Therefore, the County-approved project is consistent with the septic system standards, grading and excavation, stream and wetland resource protection, wildlife habitat protection, and visual resources and community character policies of the Marin County LCP.

In short, the County approved a reduced scale project intended to avoid a potential takings, and that appears appropriate in this case. Thus, although there are issues associated with development in the floodplain when the LCP does not typically allow it, these issues do not rise to the level of a substantial issue. As a result, staff recommends that the Commission determine that the appeal does not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement staff's recommendation is found on page 5 below.

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I. MOTION AND RESOLUTION

Staff recommends that the Commission determines that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of no substantial issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-2-MAR-15-0074 raises* ***no substantial issue*** *with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a* ***yes*** *vote.*

Resolution: *The Commission finds that Appeal Number A-2-MAR-15-0057 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND LOCATION

The County-approved project, located at 4 Calle del Embarcadero in the Stinson Beach area of Marin County, includes construction of a 1,100 square-foot residence and attached 300 square-foot garage, as well as construction of a new gravel driveway, deck, wood fence, propane tank, and septic system (APN 195-132-03). The parcel is zoned C-R-2 (Coastal, Residential, Two-family Residence) and is located within the boundaries of the Stinson Beach Community Plan.[1] The site is located in an existing residential neighborhood of some 100 homes. The southwest corner of the subject parcel is located within the 100-foot stream buffer area of Easkoot Creek. The subject parcel is located seaward of the first public road and within 500 feet of the Pacific Ocean.

See **Exhibit 1** for a location map, **Exhibit 2** for photographs of the site, and **Exhibit 3** for the County-approved project plans.[2]

[1] The Stinson Beach Community Plan is not part of the Marin County certified LCP but its land use and development policies are intended to reflect the unique character of the village of Stinson Beach and are used by the County to evaluate discretionary planning applications.

[2] These plans are not final as the project plans will be revised to reflect the reduction required by the Marin County Board of Supervisors' action with setbacks outlined in the Final Local CDP Action Notice.

B. MARIN COUNTY COASTAL PERMIT APPROVAL

On August 28, 2014, the Marin County Deputy Zoning Administrator (DZA) conditionally approved the proposed project to reflect revised plans that included modifications to the proposed front deck and a decrease in the front setback. On September 4, 2014, local Appellants appealed the DZA's approval to the Marin County Planning Commission. On October 27, 2014, the Marin County Planning Commission continued their hearing on the proposed project in order for the Applicant to submit a supplemental assessment of the adjacent stream buffer area for Easkoot Creek. On February 9, 2015, the County rescheduled the hearing. The Planning Commission denied the Appellants' appeal and conditionally approved the proposed project to reflect revised plans that eliminate the proposed project's encroachment into the stream buffer area. On February 17, 2015, the Appellants appealed the Planning Commission's approval to the Marin County Board of Supervisors. On April 7, 2015, the Board of Supervisors continued its hearing on the proposed project in order for County staff to research the LCP policy restricting development in the floodplain of Easkoot Creek. On November 17, 2015, the matter was rescheduled for a hearing. The Marin County Board of Supervisors denied the appeal and conditionally approved CDP 2014-0051 authorizing the above-described new construction at the site to reflect a reduction in the area of the proposed residence from 1,400 square feet to 1,100 square feet and a reduction in the area of the attached garage from 535 square feet to 300 square feet. The County's Final Local CDP Action Notice (**Exhibit 4**) was received in the Coastal Commission's North Central Coast District Office on Tuesday, December 8, 2015. The Coastal Commission's ten-working day appeal period for this action began on Wednesday, December 9, 2015 and concluded at 5pm on Tuesday, December 22, 2015. One valid appeal was received during the appeal period on December 22, 2015 (**Exhibit 5**).

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it is located between the sea and the first public road paralleling the sea.

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 or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission finds a substantial issue and conducts a de novo CDP hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP.

If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission were to approve a project following a de novo hearing.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants assert that the County-approved project is inconsistent with Marin County LCP policies related to septic system standards, grading and excavation, stream and wetland resource protection, wildlife habitat protection, floodplain development hazards, visual resources and community character. Specifically, the Appellants contend that: 1) the project is located in the one hundred-year floodplain of Easkoot Creek, 2) the septic system standards and grading and excavation considerations are inadequate, 3) the project is located within the one hundred-foot stream buffer area and inadequately assessed wildlife habitat areas, 4) the design of the structure is atypical of the design of surrounding residences, and 5) the Marin County LCP does not include policies for analyzing regulatory takings and that the County lacks the authority to approve regulatory takings claims. Further, the Appellants assert that the County failed to make findings of fact, specifically that the Applicant was aware that the lot was unbuildable; the Applicant did not pay fair market value; and that the County acted as a surrogate for the Applicant in initiating the takings claim. However, the Commission is only required to examine the local approval's consistency with the certified LCP or with the public access policies of the Coastal Act.

E. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (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 with the 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 the 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. Even where the Commission chooses not to hear an appeal, the Appellants nevertheless may obtain judicial review of the local government's CDP decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the County's approval of the project does not raise a substantial issue.

Substantial Issue Analysis

Floodplain Development LCP Policies

The Marin County LCP restricts floodplain development as follows:

> *Location and Density of New Development*
>
> *30. Development shall not be permitted within the 100-year floodplain of Easkoot Creek and shall otherwise conform with LCP Policies on septic systems and stream protection.*
>
> *Section 22.56.130I Development requirements, standards and conditions…*
>
> *L. Geologic Hazardous Areas.*
>
> *2. Floodplain Development. Coastal project permit applications adjacent to streams which periodically flood shall include a site plan that identifies the one hundred-year floodplain (as described by the Army Corps of Engineers). Development of permanent structures and other significant improvements shall not be permitted within the limits of the one hundred-year floodplain.*

Analysis

The subject parcel is not adjacent to a stream; it is across the street from Easkoot Creek (see photos and maps in **Exhibits 2 and 3**). However, the parcel is within the Creek's 100-year floodplain. The term floodplain has been defined by the Army Corps of Engineers (ACOE) as "an area bordering the inland or coastal waters that was informed by sediment deposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows".[3] Further, the 100-year floodplain has been described by the ACOE as the flood with a probability of 1/100 of being exceeded in any given year. The eastern edge of the subject parcel is located within 100 feet of Easkoot Creek and is located in the Creek's 100-year floodplain as modeled by the Marin County Flood Control District (Marin County Flood Control District, 2014). The subject parcel is also located in FEMA's Special Flood Hazard Area Zone AO, meaning it is at risk of up to three feet of flooding during a 100-year storm (FEMA, 2009). In a letter to owners of property located within the floodplain of Easkoot Creek, dated July 28, 2015, the County Community Development Agency staff stated that the FEMA flood zone represents the 100-year floodplain of Easkoot Creek (**Exhibit 6**). Therefore, since the subject parcel is within the FEMA flood zone, the subject parcel is located in the 100-year floodplain of Easkoot Creek, regardless whether it has been officially measured by the Army Corps of Engineers.

Marin County LCP Policy 30 on location and density of new development and LCP Section 22.56.130(L)(2) on floodplain development, prohibits development of permanent structures within the limits of the 100-year floodplain and more specifically the 100-year floodplain of Easkoot Creek. Therefore, the proposed project is inconsistent with Marin County LCP policies

[3] Department of Defense, Department of the Army, Corps of Engineers; and Environmental Protection Agency, Definition of "Waters of the United States" Under the Clean Water Act, Proposed Rule, 79 Fed. Reg. 22199 (April 21, 2014). The definition of "floodplain" is omitted from the final rule, although mentioned in the preamble. The final rule references the 100-year floodplain, in part because the FEMA has mapped large portions of these areas in the United States, including at the subject site. (Department of Defense, Department of the Army, Corps of Engineers; and Environmental Protection Agency, Clean Water Rule: Definition of "Waters of the United States, Final Rule, 80 Fed. Reg. 37083 (June 29, 2015).

related to floodplain development that apply to this site and would require that the project be denied.

Other applicable LCP policies
The Marin County LCP requires the following standards for projects that utilize septic systems for sewage disposal:

> *Section 22.56.130I Development requirements, standards and conditions…*
> *B. Septic System Standards.*
> *1. All septic systems within the coastal zone shall conform with the "Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems" adopted by the Regional Water Quality Control Board on April 17, 1979, or the Marin County Code, whichever is more stringent…*

The Marin County LCP requires the following standards for projects that involve the grading and excavation of one hundred fifty cubic yards or more of material:

> *Section 22.56.130I Development requirements, standards and conditions…*
> *C. Grading and Excavation.*
> *1. Development shall be designed to fit a site's topography and existing soil, geological, and hydrological conditions so that grading, cut and fill operations, and other site preparations are kept to an absolute minimum and natural landforms are preserved. Development shall not be allowed on sites, or areas of a site, which are not suited to development because of known soil, geology, flood, erosion or other hazards that exist to such a degree that corrective work, consistent with these policies (including but not limited to the protection of natural landform), is unable to eliminate hazards to the property endangered thereby.*
> *2. For necessary grading operations, the smallest practicable area of land shall be exposed at any one time during development and the length of exposure shall be kept to the shortest practicable time. The clearing of land shall be discouraged during the winter rainy season and stabilizing slopes shall be in place before the beginning of the rainy season.*

The Marin County LCP requires protection of stream and wetland resources as follows.

> *Section 22.56.130I Development requirements, standards and conditions…*
> *G. Stream and Wetland Resource Protection. The following standards shall apply to all development within or adjacent streams identified as blue-line streams on the most recent edition of the USGS seven and one-half minute quadrangle map(s) for the project area.*
> *For proposed projects located adjacent to streams, application submittals shall include the identification of existing riparian vegetation as a riparian protection area. No construction, alteration of land forms or vegetation removal shall be permitted within such riparian protection area. Additionally, such project applications shall identify a stream buffer area which shall extend a minimum of*

> *fifty feet from the outer edge of riparian vegetation, but in no case less than one hundred feet from the banks of a stream. Development shall not be located within this stream buffer area…*

The Marin County LCP requires protection of wildlife habitat as follows:

> *Section 22.56.130I Development requirements, standards and conditions…*
> *I. Wildlife Habitat Protection.*
> *2. Siting of New Development. Coastal project permit applications shall be accompanied by detailed site plans indicating existing and proposed construction, major vegetation, watercourses, natural features and other probable wildlife habitat areas. Development shall be sited to avoid such wildlife habitat areas and to provide buffers for such habitat areas. Construction activities shall be phased to reduce impacts during breeding and nesting periods. Development that significantly interferes with wildlife movement, particularly access to water, shall not be permitted.*

The Marin County LCP requires protection of visual resources and community character as follows:

> *Section 22.56.130I Development requirements, standards and conditions…*
> *O. Visual Resources and Community Character.*
> *1. All new construction in Bolinas, Stinson Beach, and Muir Beach shall be restricted to a maximum height of twenty-five feet…*
> *2. To the maximum extent feasible, new development shall be designed and sited so as not to impair or obstruct existing coastal views from Highway 1 or Panoramic Highway.*
> *3. The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.*

Analysis

With respect to the County-approved project's consistency with other LCP policies, the Commission concurs with the County's findings. The septic system of the County-approved project has been reviewed and accepted by the Stinson Beach County Water District, which found that the residence is adequately sized for the approved wastewater system design and that the septic system is adequately set back from the property lines. Marin County LCP policies require grading to be kept to a minimum, and include specific standards for projects that involve grading and excavation of 150 cubic yards or more. 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 and it does not appear that the grading in and of itself raises any other LCP concerns. The County-approved project has been modified to move the proposed development out of the LCP-required 100-foot stream buffer area as measured from the stream banks and the LCP-required 50-foot riparian protection area. Further, the subject parcel is a

vacant lot that supports ruderal vegetation, surrounded by residential land uses, and no sensitive species were found on the site.

With respect to visual resources and community character, 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. Further, the applicant was seeking County CDP approval for construction of a 1,400 square foot residence with an attached 535 square foot garage, which the Board of Supervisors reduced during its hearing to a 1,100 square foot residence with a 300 square foot garage. The Board also increased the setbacks by six feet from the northerly side property line and by two feet from the southerly side property line.

Thus, the appeal does not raise a substantial issue of LCP conformance with respect to the Marin LCP policies related to septic system standards, grading and excavation, stream and wetland protection, wildlife habitat protection, or visual resources and community character.

Takings
The Appellants claim the Board of Supervisors lacked authority to decide on a constitutional taking claim. However, the Board did not finally decide on any claim; it was only prudently relying on analysis of a potential, expensive claim as it may do to forestall any litigation.

The Appellants claim the County lacks regulations that set standards by which to determine takings issues and that its decision was therefore arbitrary and capricious. There is, however, a robust body of law on takings issues from the U.S. Supreme Court, most pertinently, *Lucas v. South Carolina Coastal Council* ((1992) 505 U.S. 1003) and *Penn Central Transportation Co. v. New York*. ((1978) 438 U.S. 104), that provide guidance on when regulatory actions may constitute a taking. In fact, the Board, like the Coastal Commission, is not authorized by the Coastal Act to implement its LCP in a manner that would constitute a taking without just compensation (see Coastal Act Section 30010 [Coastal Act does not authorize the Commission or a local government to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation.]).[4] To comply with Coastal Act Section 30010, the Commission has conducted similar takings analyses on de novo review for proposed homes, such as the permits for Winget, a modest home on a bluff (CDP No. 1-12-023), and for Hodge, a moderately sized home on a vacant lot, development of which was inconsistent with several San Mateo County LCP policies regarding sensitive habitats and visual resources (Appeal No. A-2-SMC-11-040). Thus, the County should consider the potential for its action on a CDP to constitute a taking, regardless of whether there are specific regulations directly on point.

In the takings allegation, the Appellants point to nuisance as a "complete" defense to takings claims. This is not an accurate reading of applicable law (see, for example *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 301 [to be enjoinable, public nuisance must be both substantial and unreasonable]). Even if that were the case here, developing this parcel

[4] The Commission considered similar allegations by Richard Kohn against the Commission during a hearing in December 2015. The petition and response by Commission counsel is available le at http://documents.coastal.ca.gov/reports/2015/12/w7e-12-2015.pdf.

with a single family residence does not inherently create a nuisance. The project does not increase floodwaters and as designed, will not change their flow and will not affect neighboring properties. As required by FEMA, the Applicant has designed the foundation of the residence to be above the base flood elevation. Because the footprint of the proposed residence is small compared to the area of flooding, the depth of flooding in the flood zone should not detectably change as a result of the development.

The Appellants claim the Board failed to make necessary findings of fact to support its takings analysis. However, as shown in the Resolution, the County cited several facts, including the purchase price, the zoning, the fact that the immediate neighborhood contains many homes, some approved after the certification of the LCP, etc. (**Exhibit 4**). Further, the overwhelming fact is that the Applicant proposes a modestly-sized home on a vacant lot that is zoned residential. The Applicant reasonably surmised she could build a home on the lot for which she paid market value within Stinson Beach.

Finally, the Appellants claim the County somehow acted as a "surrogate" for the Applicant in analyzing a potential takings claim. As explained above, however, the County is entitled to avoid an action that would constitute a taking without just compensation by conducting fact-specific analysis and acting in a prudent manner.

The Commission concurs with the County's conclusion that denial of the proposed project based on the application of Marin LCP policies could have constituted a taking without just compensation. A denial of a modestly-sized home on a vacant lot in this case would likely constitute a categorical taking of the Applicant's property, since there is no design that can occur outside of the 100-year floodplain (see *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014.). Under the rubric of a *Penn Central* regulatory taking, which evaluates the nature of the government action, whether the government's action denies an owner's reasonable investment-backed expectations, and the diminution in value to the property caused by the government action, the County correctly determined that denial of the project may have led to a viable takings claim (**Exhibit 4**). In brief, the County determined the Applicant paid fair market value of $360,000 for a vacant lot in the neighborhood where developed homes sell for an average of $500,000. Despite being in the 100-year floodplain, the parcel is zoned residential and is surrounded by single family homes; the County cited 13 new residences and 15 substantial additions in the floodplain that were approved since the LCP was certified. The County-approved home is of modest size, consistent with the surrounding neighborhood. Additionally, the development does not otherwise conflict with the LCP nor does it adversely impact coastal resources.

Furthermore, the County examined an alternative and imposed it, reducing the area of the proposed residence from 1,400 square feet to 1,100 square feet and reducing the area of the attached garage from 535 square feet to 300 square feet, making a modest home more modest. Addressing flood concerns, the residence as approved will be elevated about the Base Flood Elevation established by FEMA and will be constructed with floodproofing measures such as a minimum of two openings, equipped with screens, louvers, or valves, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. Thus, any flooding impacts are minimized in the project.

Therefore, the Commission finds that in this case the County's reliance on taking analysis to approve the development, as modified, was proper, and does not raise a substantial issue.

Conclusion: No Substantial Issue

In addition to the above analysis, the five factors often times used by the Commission as guidance in determining whether a substantial issue exists also support a finding that the appeal does not raise a substantial issue. First, the 100-year floodplain of Easkoot Creek has been modeled by the Marin County Flood Control District and FEMA consistent with how 100-year floodplains are described by the ACOE. Mapping of the 100-year floodplain is intended to minimize exposure of life and property to flood hazards and adverse impacts on Easkoot Creek. As documented in the County's letter to Stinson Beach homeowners dated July 28, 2015, the proposed project is located in the 100-year floodplain of Easkoot Creek and therefore, is inconsistent with Marin County LCP policies on floodplain development. However, Marin County presented legal and factual evidence to support the decision to approve the single-family residence. Specifically, the Applicant paid fair market value for the property, which is zoned for residential development and is located in a neighborhood of similar homes. Second, 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. 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. Proposed new residential development 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, the proposed project constitutes infill residential development on a vacant lot that will not adversely impact coastal resources. Finally, the project does not raise issues of regional or statewide significance because it raises issues with policies that are specific to the Marin LCP in this particular neighborhood adjacent to Easkoot Creek.

For the reasons stated above, the Commission finds that Appeal Number A-2-MAR-15-0074 presents no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. Thus, the Commission declines to take jurisdiction over the CDP application for the project.

Substantive File Documents

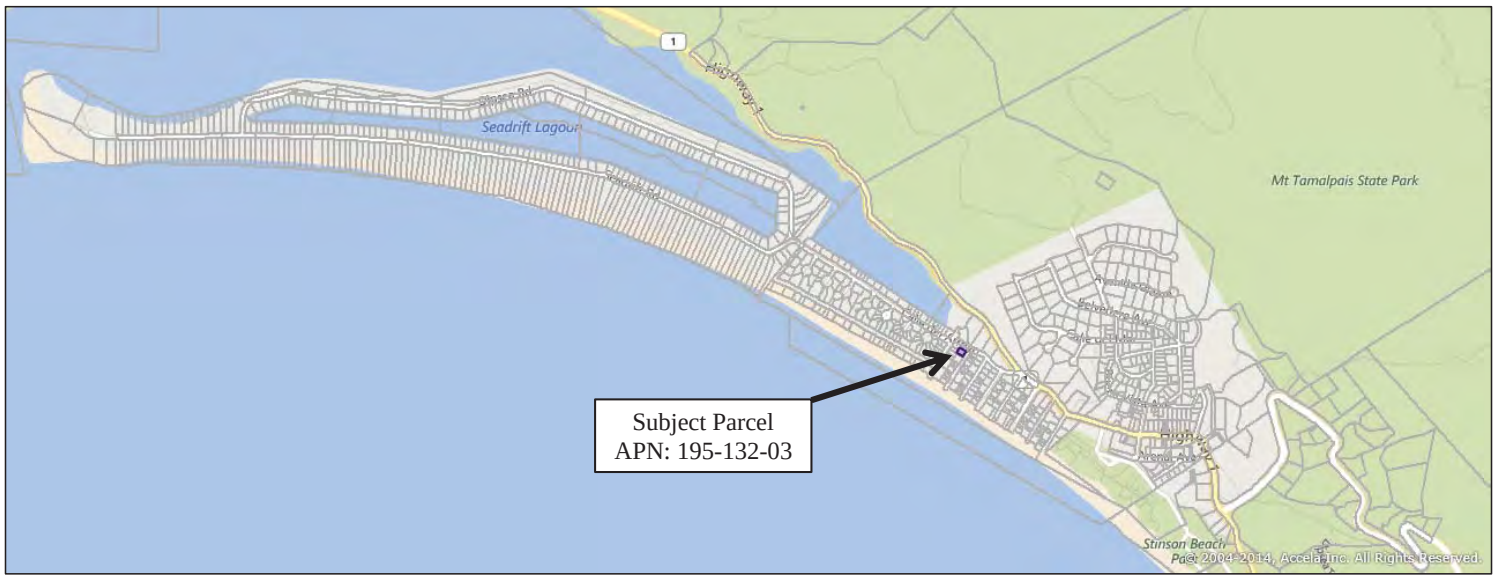
Department of the Army, Corps of Engineers and Environmental Protection Agency. "Definition of "Waters of the United States" Under the Clean Water Act," 79 Federal Register 76 (21 April 2014), pp. 22188 - 22219.

Federal Emergency Management Agency (FEMA). Flood Insurance Rate Map. Marin County, California and incorporated areas. Panel 444 of 531. Map Number 06041C0444D. Effective Date May 4, 2009.

Marin County Flood Control and Water Conservation District. Stinson Beach Watershed Program Flood Study and Alternatives Assessment. Prepared by: O'Connor Environmental, Inc. May 2014

Stinson Beach Historical Society. Virtual Exhibits, Easkoot Creek. http://stinsonbeachhistoricalsociety.org/collections/virtual_exhibits

PROJECT LOCATION MAP

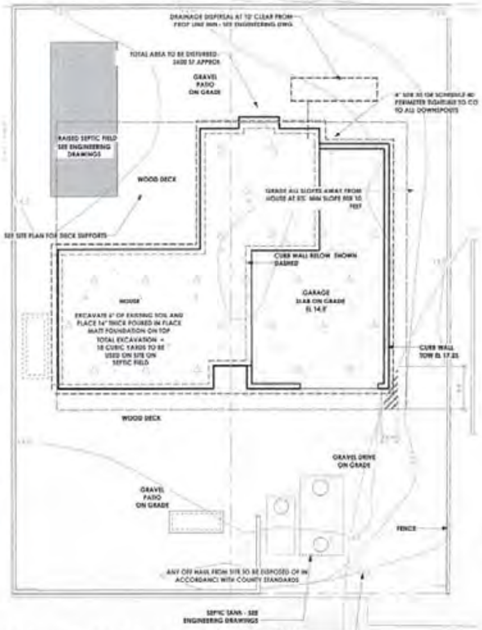


1000 feet

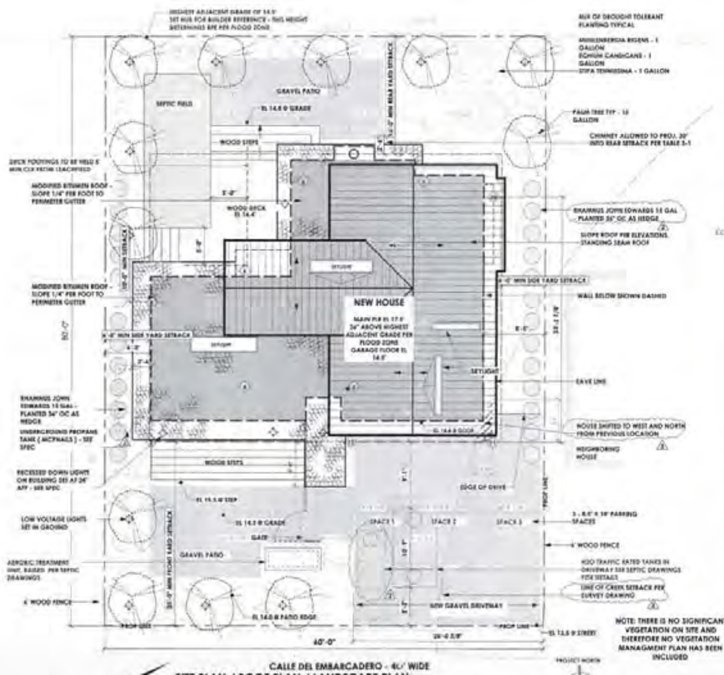
PROJECT AREA PHOTO

Source: California Coastal Records Project, 2002.

Stinson Beach House



GRADING / DRAINAGE PLAN
SCALE: 1/8 = 1'-0"



CALLE DEL EMBARCADERO - 40' WIDE
SITE PLAN / ROOF PLAN / LANDSCAPE PLAN
SCALE: 1/8 = 1'-0"

NOTE: THERE IS NO SIGNIFICANT VEGETATION ON SITE AND THEREFORE NO VEGETATION MANAGMENT PLAN HAS BEEN INCLUDED

WA design
805 Folger Avenue
Berkeley
California
94710
wadesign.com
510 883 0868 f
510 883 0869 f

RECEIVED NOV 24 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

Hjorth / Natale
Stinson Beach House

PROJECT
Calle De Embarcadero
Stinson Beach, Ca

OWNER
Heidi Hjorth
Fabrizio Natale
30 Juanita Ave
Mill Valley, Ca. 94941

PHONE
Heidi Cell - 415.209.3236

REVISED DESIGN
11-17-14

NOTE: ENTIRE STRUCTURE IS IN FLOOD HAZARD ZONE A0 AND BFE = 3 FEET ABOVE HIGHEST ADJACENT GRADE AT PL. LOWEST FLOOR ELEVATION SHALL BE ABOVE BFE

a) All new construction shall be constructed with materials and utility equipment resistant to flood damage; b) all shall be constructed using methods and practices that minimize flood damage; c) all shall be constructed with electrical, heating, ventilation, plumbing and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Provide notes and specifications to this effect on the plan.

SITE NOTES

1	27.00'
2	27.00'
3	27.00'
4	29.13'
5	29.13'
6	29.13'
7	29.13'
8	26.75'
9	25.75'
10	25.75'
11	26.75'
12	26.75'

STORY POLE HEIGHTS
SCALE: NTS

CONDITIONED
MAIN: 740 SF
UPPER: 660 SF
TOTAL: 1400 SF

UNCONDITIONED
MAIN: 535 SF
UPPER: 0 SF
TOTAL: 535 SF

AREA CALCS
SCALE: NTS

PROJECT DATA

PROPERTY ADDRESS

Calle Del Embarcadero (address to be determined)
STINSON BEACH, CA
APN# 195-132-02

SQUARE FOOTAGE CALCULATIONS

MAIN FLOOR CONDITIONED	740
UPPER FLOOR & STAIR (SF) - CONDITIONED	660
TOTAL CONDITIONED AREA (SF)	1400
GARAGE - UNCONDITIONED	535
F.A.R. - 4800 SF LOT AT 30%	1440 ALLOWED
1400SF CONDITIONED + 35SF GARAGE OVERAGE =	1435
1435SF IS LESS THAN MAX ALLOWED (1440SF) =	OK

PLANNING / BUILDING INFORMATION

ZONE	C-R 2
LOT SIZE	4800 SF
SETBACKS / HEIGHT REQUIRED	
FRONT	25'0"
LEFT SIDE	6'0"
RIGHT SIDE	6'0"
REAR (20% LOT DEPTH)	16'0"
MAX HEIGHT	25'0"
SETBACKS / HEIGHT PROPOSED	
FRONT	25'0"
LEFT SIDE	6'7"
RIGHT SIDE	7'0"
REAR	19'6"
MAX HEIGHT	24'9"
PARKING SPACES REQUIRED	4 SPACES
TYPE OF CONSTRUCTION	V-N
APPROXIMATE EXCAVATION	9
APPROXIMATE FILL	18 YARDS PER PLAN

PROJECT DESCRIPTION

NEW, 1400 SF (CONDITIONED SPACE) SINGLE FAMILY RESIDENCE

PROJECT DIRECTORY

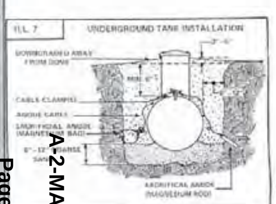
Architect	David S Wilson, Architect WA Design 805 FOLGER AVENUE BERKELEY, CA 94710 510 883-0868 x2 F 510 604-1476 C wadesign.com
Surveyor	Douglas Matteson 200 Gate 5 Road #201a Sausalito, Ca 94965 415.332.7614 djmatt@pacbell.net
Septic Engineer	Questa Engineering 1220 Brickyard Cove Point Richmond, Ca 94807 510.236.6114

SHEET INDEX

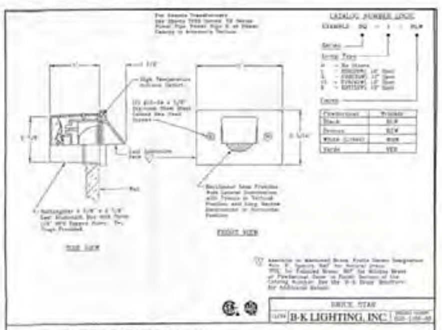
A 00	COVERSHEET / SITE PLAN
A 1	FLOOR PLANS
A 2	ELEVATIONS
A 2.1	SECTIONS
TOPO 1	TOPO SURVEY

COVER SHEET
SITE PLAN

SHEET
A-00



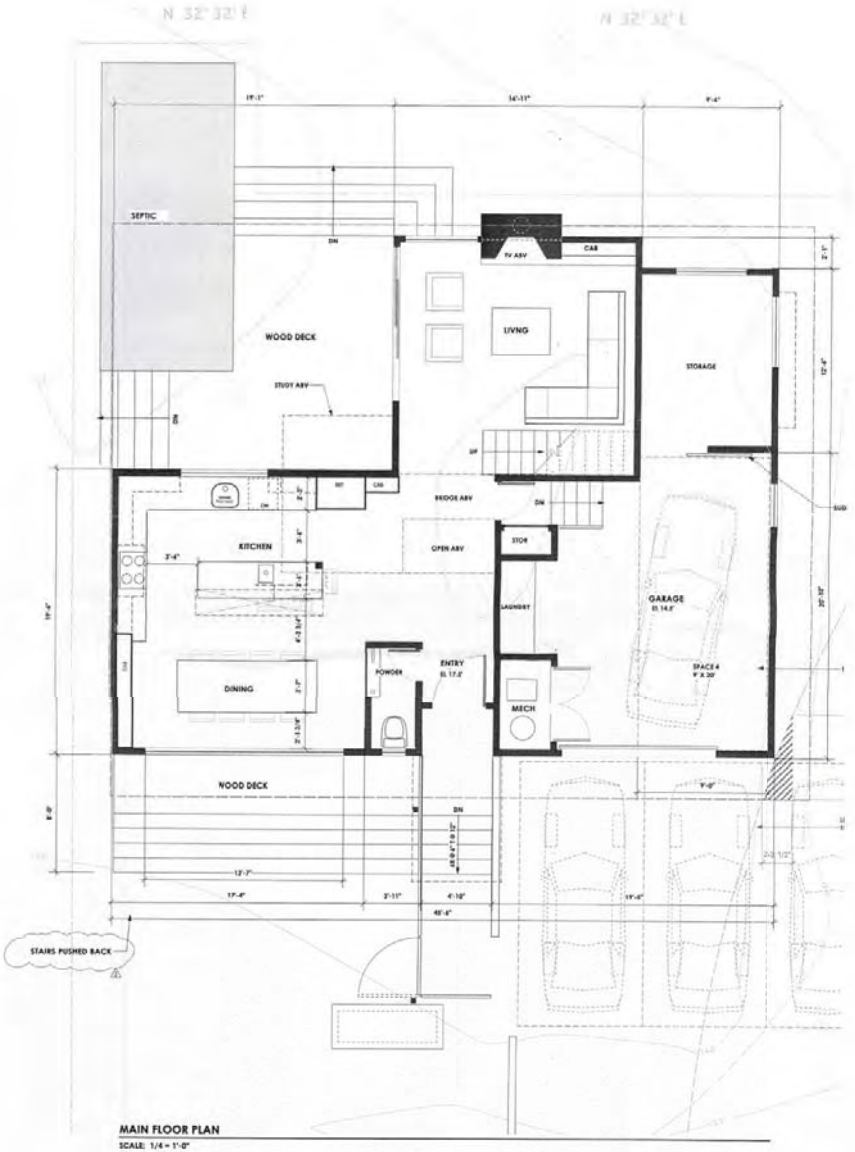
PROPANE TANK (McPhails)



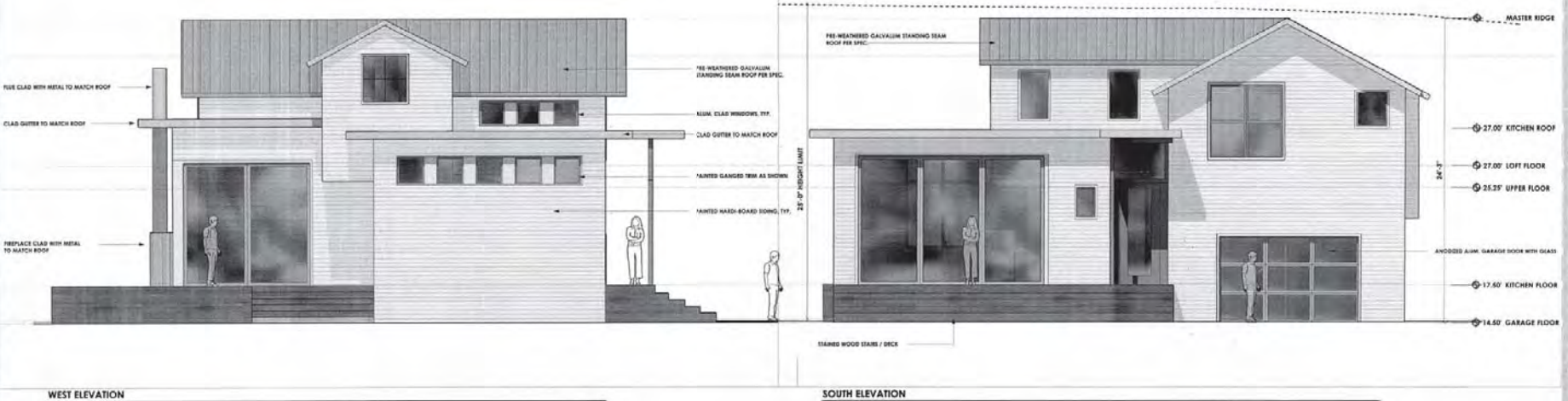
TYP EXTERIOR WALL LIGHTING
SCALE: NTS

VICINITY MAP
SCALE: NTS

A-2-MAR-15-0074
Exhibit 3
Page of 1 of 11

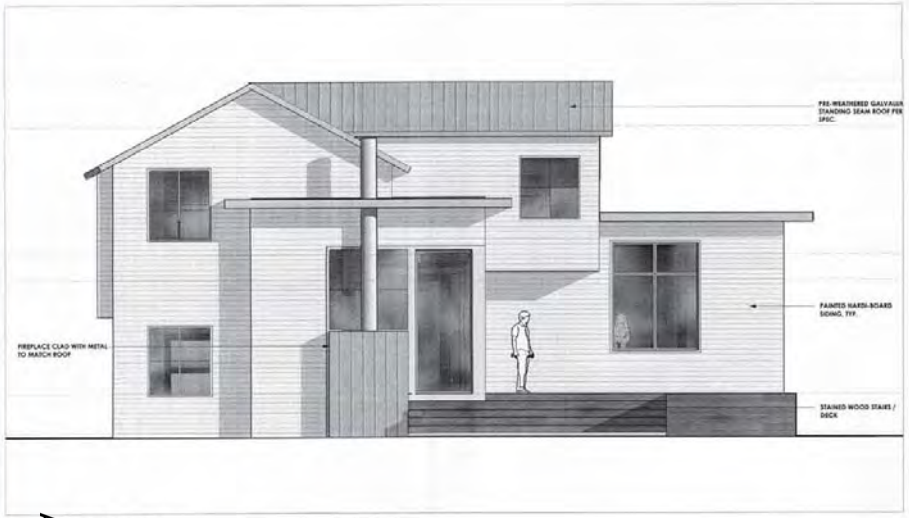


MAIN FLOOR PLAN
SCALE: 1/4 = 1'-0"

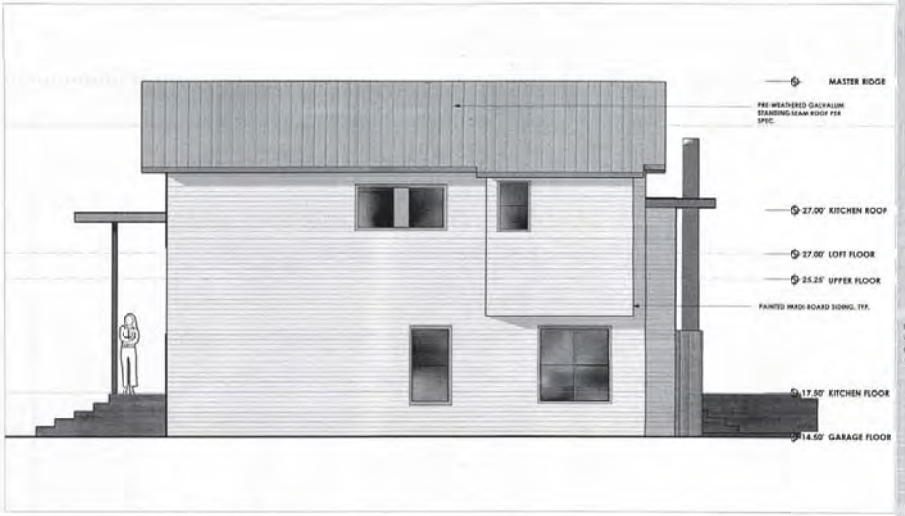


WEST ELEVATION
SCALE: 1/4 = 1'-0"

SOUTH ELEVATION
SCALE: 1/4 = 1'-0"



NORTH ELEVATION
SCALE: 1/4 = 1'-0"



EAST ELEVATION
SCALE: 1/4 = 1'-0"

WA design
805 Folger Avenue
Berkeley
California
94710
wadesign.com
510
883 0868 t
883 0869 f

Hjorth / Natale
Stinson Beach House

PROJECT:
Calle De Embarcadero
Stinson Beach, Ca

OWNER:
Heidi Hjorth
Fabrizio Natale
30 Juanita Ave
Mill Valley, Ca. 94941

PHONE:
Heidi Cell - 415.209.3236

REVISED DESIGN
11-17-14

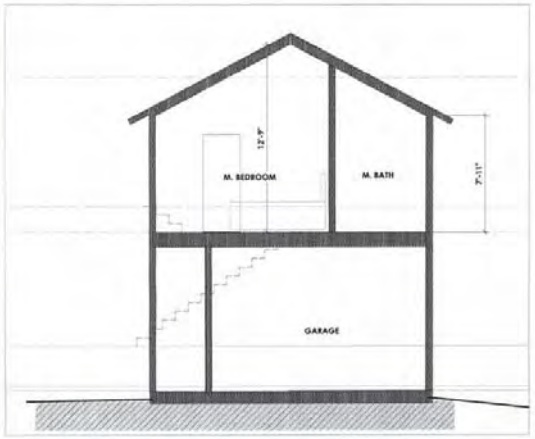
ELEVATIONS / SECTION

DATE	SUBMISSION	REV
10-29-14	MARIN PLANNING	
11-5-14	MARIN PLANNING	
11-20-14	MARIN PLANNING	
11-17-14	REVISION	

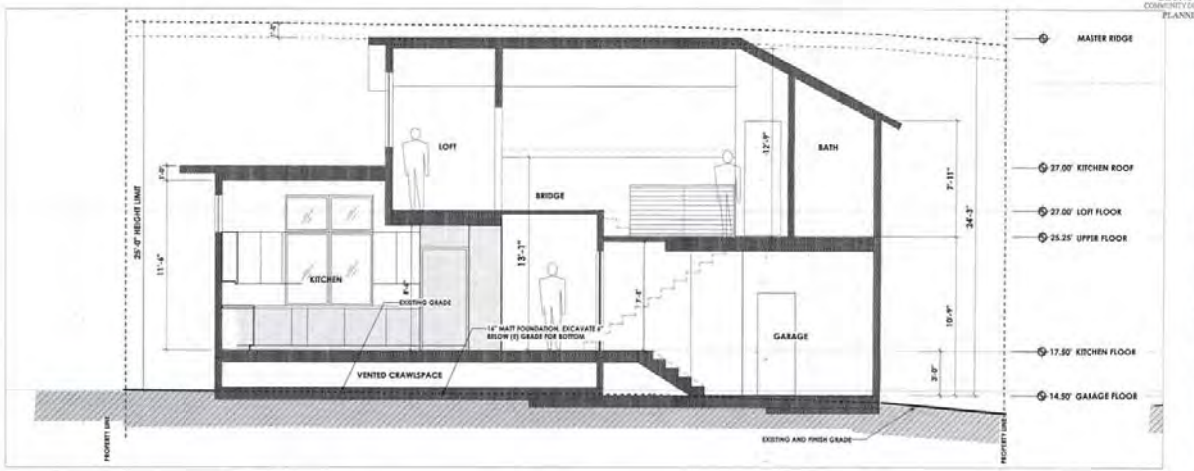
PROJECT: 111
DRAWN: CP / SSW
CHECK:
SCALE:
SHEET:

A-2.0

OF 8 SHEETS



SECTION AT GARAGE
SCALE: 1/4 = 1'-0"



EAST / WEST SECTION
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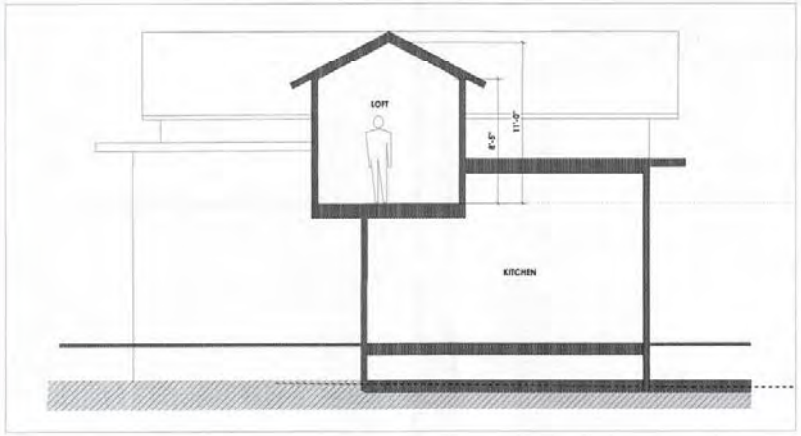
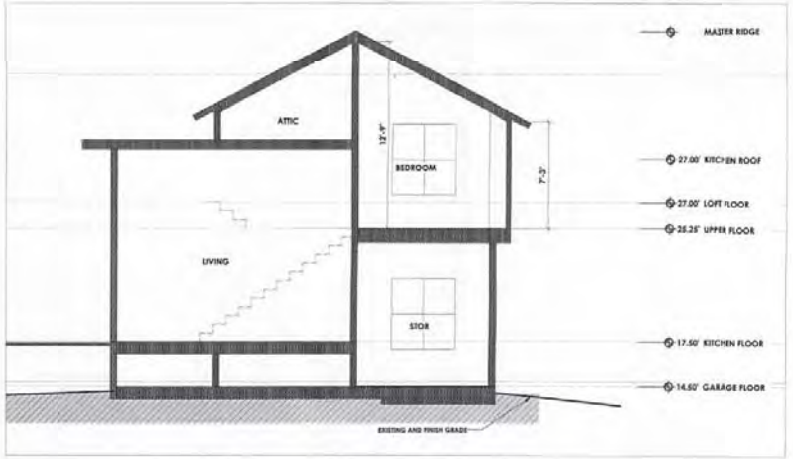


SECTION THRU KITCHEN / LOFT
SCALE: 1/4 = 1'-0"



SECTION THRU LIVING AND BEDROOM
SCALE: 1/4 = 1'-0"

WA design
805 Folger Avenue
Berkeley
California
94710
wadesign.com
510
883 0868 t
883 0869 f

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30 Juanita Ave
Mill Valley, Ca. 94941

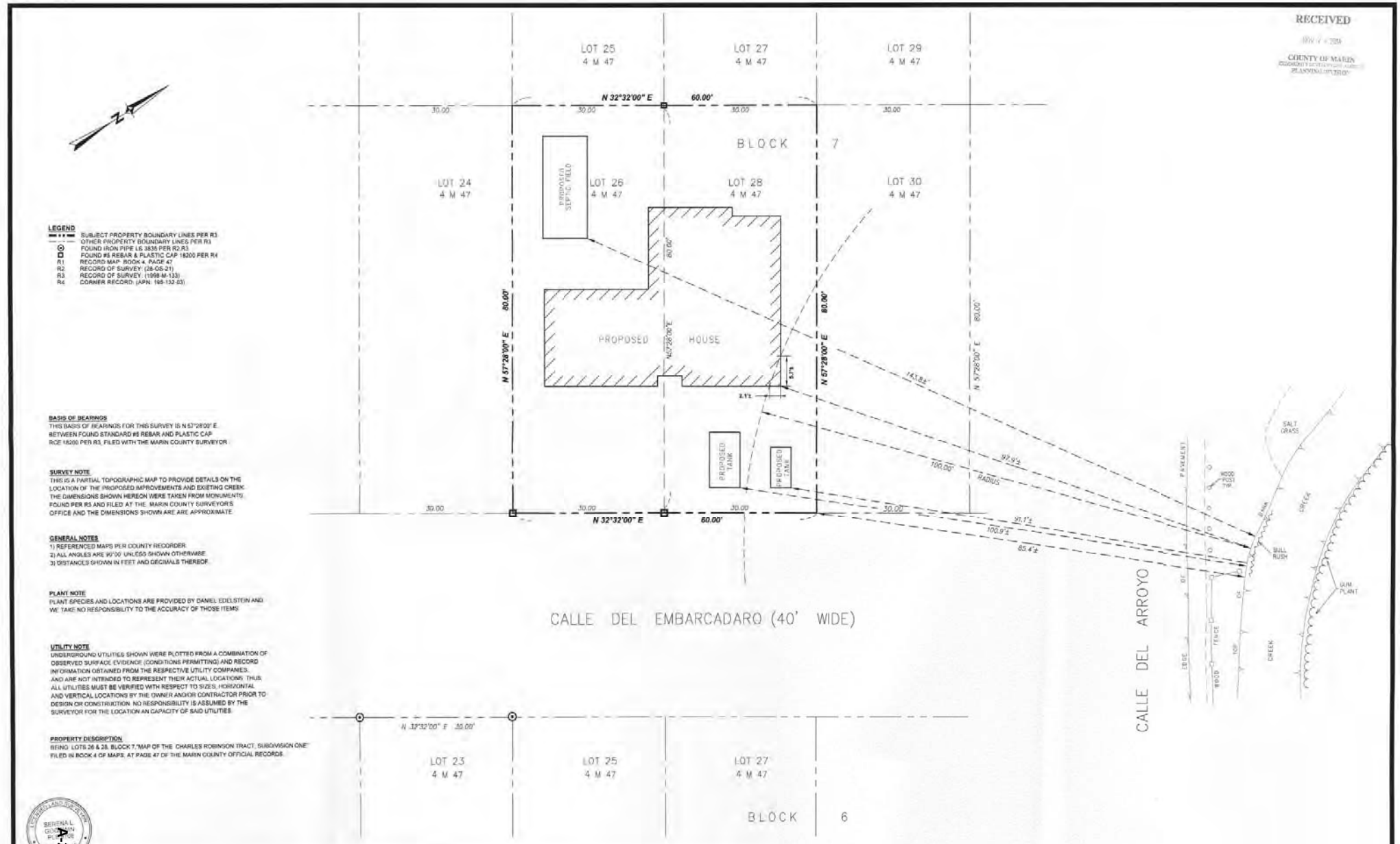
PHONE:
Heidi Cell - 415.209.3236

REVISED DESIGN
11-17-14

ELEVATIONS / SECTION

DATE	SUBMISSION	REV
12.03.14	MARIN PLANNING	
09.11.14	MARIN PLANNING	
10.20.14	MARIN PLANNING	
11.07.14	REVISION	

PROJECT: 332
DRAWN: CP, DSW
CHECK:
SCALE:
SHEET:
A-2.2
OF 0 SHEETS



LEGEND

- SUBJECT PROPERTY BOUNDARY LINES PER R3
- OTHER PROPERTY BOUNDARY LINES PER R3
- FOUND IRON PIPE LS 3835 PER R2,R3
- FOUND #5 REBAR & PLASTIC CAP 18200 PER R4
- R1 RECORD MAP, BOOK 4, PAGE 47
- R2 RECORD OF SURVEY: (28-QS-21)
- R3 RECORD OF SURVEY: (1998-M-133)
- R4 CORNER RECORD: (APN: 195-132-03)

BASIS OF BEARINGS
THIS BASIS OF BEARINGS FOR THIS SURVEY IS N 57°28'00" E BETWEEN FOUND STANDARD #5 REBAR AND PLASTIC CAP RCE 18200 PER R3, FILED WITH THE MARIN COUNTY SURVEYOR

SURVEY NOTE
THIS IS A PARTIAL TOPOGRAPHIC MAP TO PROVIDE DETAILS ON THE LOCATION OF THE PROPOSED IMPROVEMENTS AND EXISTING CREEK. THE DIMENSIONS SHOWN HEREON WERE TAKEN FROM MONUMENTS FOUND PER R3 AND FILED AT THE MARIN COUNTY SURVEYOR'S OFFICE AND THE DIMENSIONS SHOWN ARE ARE APPROXIMATE.

GENERAL NOTES
1) REFERENCED MAPS PER COUNTY RECORDER.
2) ALL ANGLES ARE 90°00' UNLESS SHOWN OTHERWISE.
3) DISTANCES SHOWN IN FEET AND DECIMALS THEREOF.

PLANT NOTE
PLANT SPECIES AND LOCATIONS ARE PROVIDED BY DANIEL EDELSTEIN AND WE TAKE NO RESPONSIBILITY TO THE ACCURACY OF THOSE ITEMS.

UTILITY NOTE
UNDERGROUND UTILITIES SHOWN WERE PLOTTED FROM A COMBINATION OF OBSERVED SURFACE EVIDENCE (CONDITIONS PERMITTING) AND RECORD INFORMATION OBTAINED FROM THE RESPECTIVE UTILITY COMPANIES, AND ARE NOT INTENDED TO REPRESENT THEIR ACTUAL LOCATIONS. THUS ALL UTILITIES MUST BE VERIFIED WITH RESPECT TO SIZES, HORIZONTAL AND VERTICAL LOCATIONS BY THE OWNER AND/OR CONTRACTOR PRIOR TO DESIGN OR CONSTRUCTION. NO RESPONSIBILITY IS ASSUMED BY THE SURVEYOR FOR THE LOCATION AN CAPACITY OF SAID UTILITIES.

PROPERTY DESCRIPTION
BEING: LOTS 26 & 28, BLOCK 7,"MAP OF THE CHARLES ROBINSON TRACT, SUBDIVISION ONE" FILED IN BOOK 4 OF MAPS, AT PAGE 47 OF THE MARIN COUNTY OFFICIAL RECORDS.

SERENA L. GOODWIN PLS 8708

Serena L. Goodwin, L.S. No. 8708, Expires 12/31/2015

DATE 11/20/2014
FILE# A13.0026
DRAWN BY JE
APPROVED BY SG

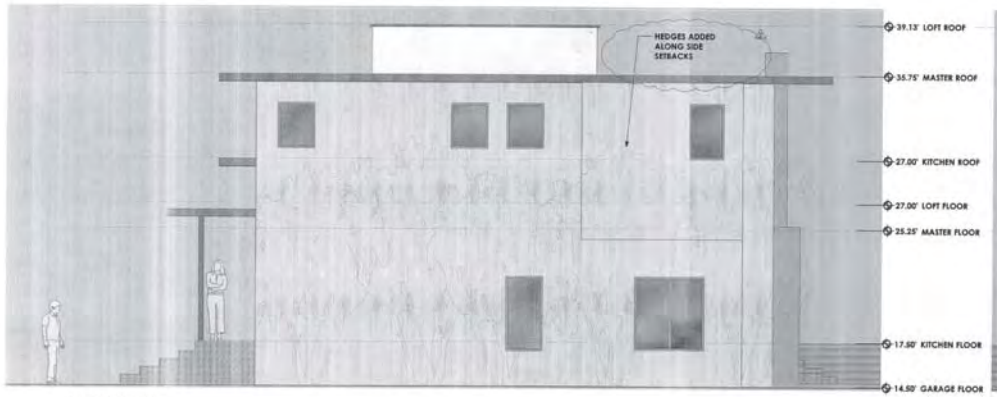
No.	BY	DATE	REVISION

ORIGINAL SCALE: 1" = 8'

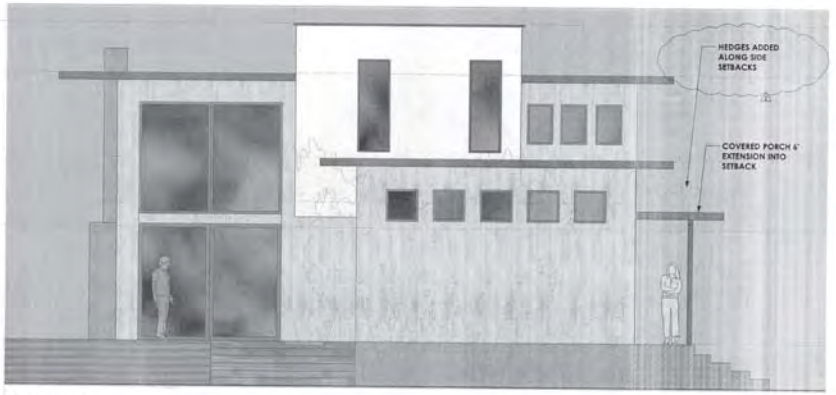
AMERICAN LAND SURVEYING, INC.
1390 MARKET ST, SUITE 112, SAN FRANCISCO, CA 94102
PH: (415) 888-8580 FAX: (866) 260-5454

PARTIAL TOPOGRAPHIC MAP
8 CALLE DEL EMBARCADARO
STINSON, CA - APN:195-132-03

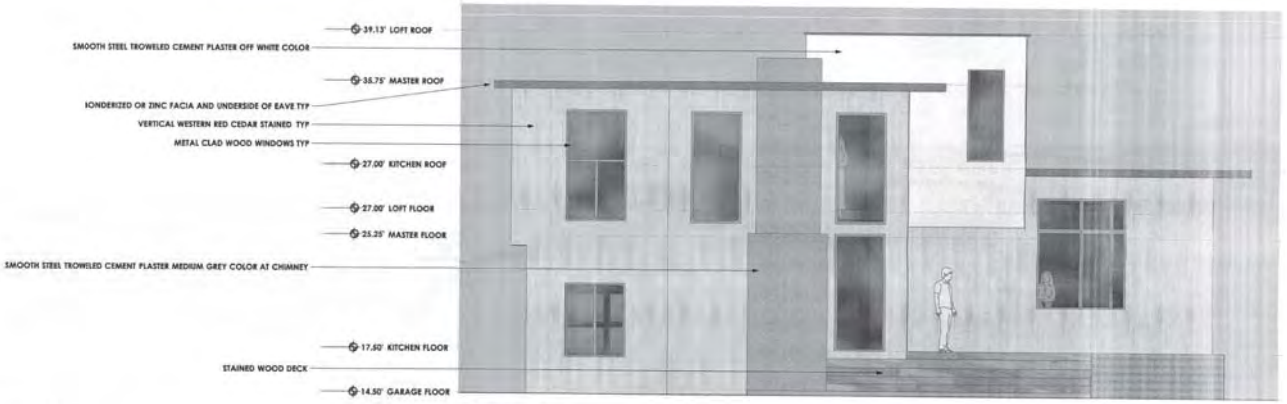
SHEET NO.
1 of 1



EAST ELEVATION
SCALE: 1/4 = 1'-0"



WEST ELEVATION
SCALE: 1/4 = 1'-0"



NORTH ELEVATION
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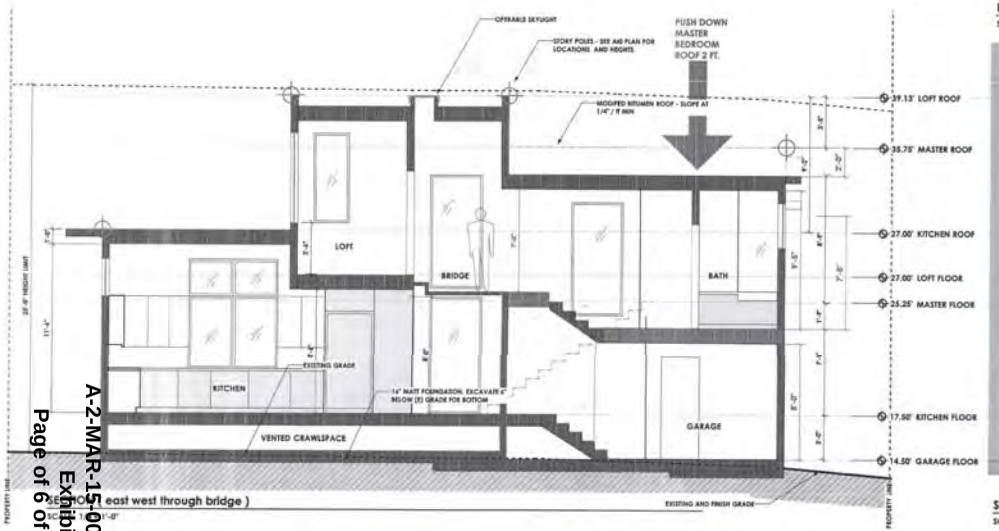
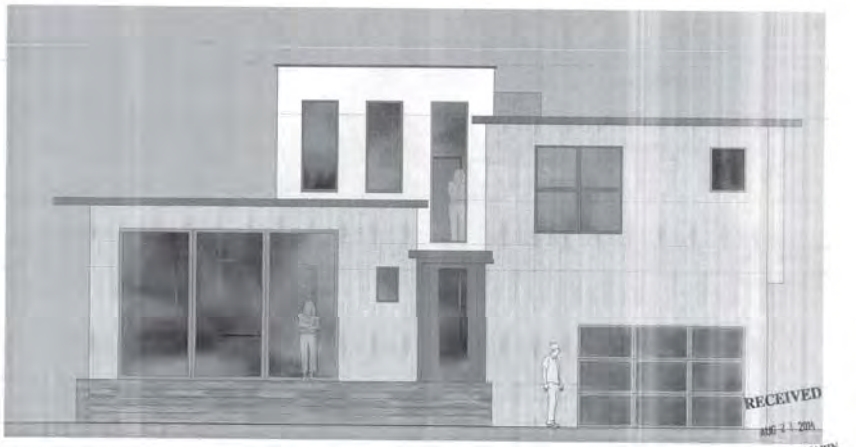


(east west through bridge)



SOUTH (STREET) ELEVATION
SCALE: 1/4 = 1'-0"

RECEIVED
AUG 2 1 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

WA design
80 Folger Avenue
Berkeley
California
94110
wadesign.com
510
883.0868 t
883.0869 f

Hjorth / Natale
Stinson Beech House

PROJECT:
Calle De Embarcadero
Stinson Beach, Ca

OWNER:
Heidi Hjorth
Fabrizio Natale
30 Juanita Ave
Mill Valley, Ca. 94941

PHONE:
Heidi Cell - 415.299.3236

ELEVATIONS / SECTION

DATE	SUBMISSION	REV
02.01.14	MARIN PLANNING	
06.13.14	MARIN PLANNING	1
08.20.14	MARIN PLANNING	2

A-31

Revision Deck

Lands of Royce Topographic Map
with Ctrs., at 0.5' Interval
Stinson Beach, Marin Co., CALIFORNIA
SHEET
C1
Douglas Matteson
Civil Engineer
5 HERON CT SAN
RAFAEL CA 94901
415 332-7614 Phone
email: djmatt@pacbell.net
RECEIVED
APR 30 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION
N 32° 32' E
30.00
CALLE DE EMBARCADARO 40' WIDE
TBM = ELEV. 14.01 Nail in Rd.
BROWN
HOUSE
ROYCE
APN: 195-132-03
DN: 2006-013008
LOWRY
SILK
APN: 195-132-20
DN 98-006374
80.00
S 57° 28 E
CALLE DE OCCIDENTE
1"=10'
DATE: JULY 2011
SHEET ONE OF ONE
APN: 195-132-03

PROPERTY BOUNDARIES (1"=20')

LOCATION MAP

LEGEND

- ⊕ Soil Profile Trench & Groundwater Monitoring (A & B) by Earth Systems (2006)
- MW1 ⊕ GROUNDWATER LEVEL MONITORING WELLS (MW1–MW3) BY QUESTA ENGINEERING, 2011
- ⊙ GROUNDWATER TEST HOLE OBSERVATION BY QUESTA ENGINEERING, 03/22/2011

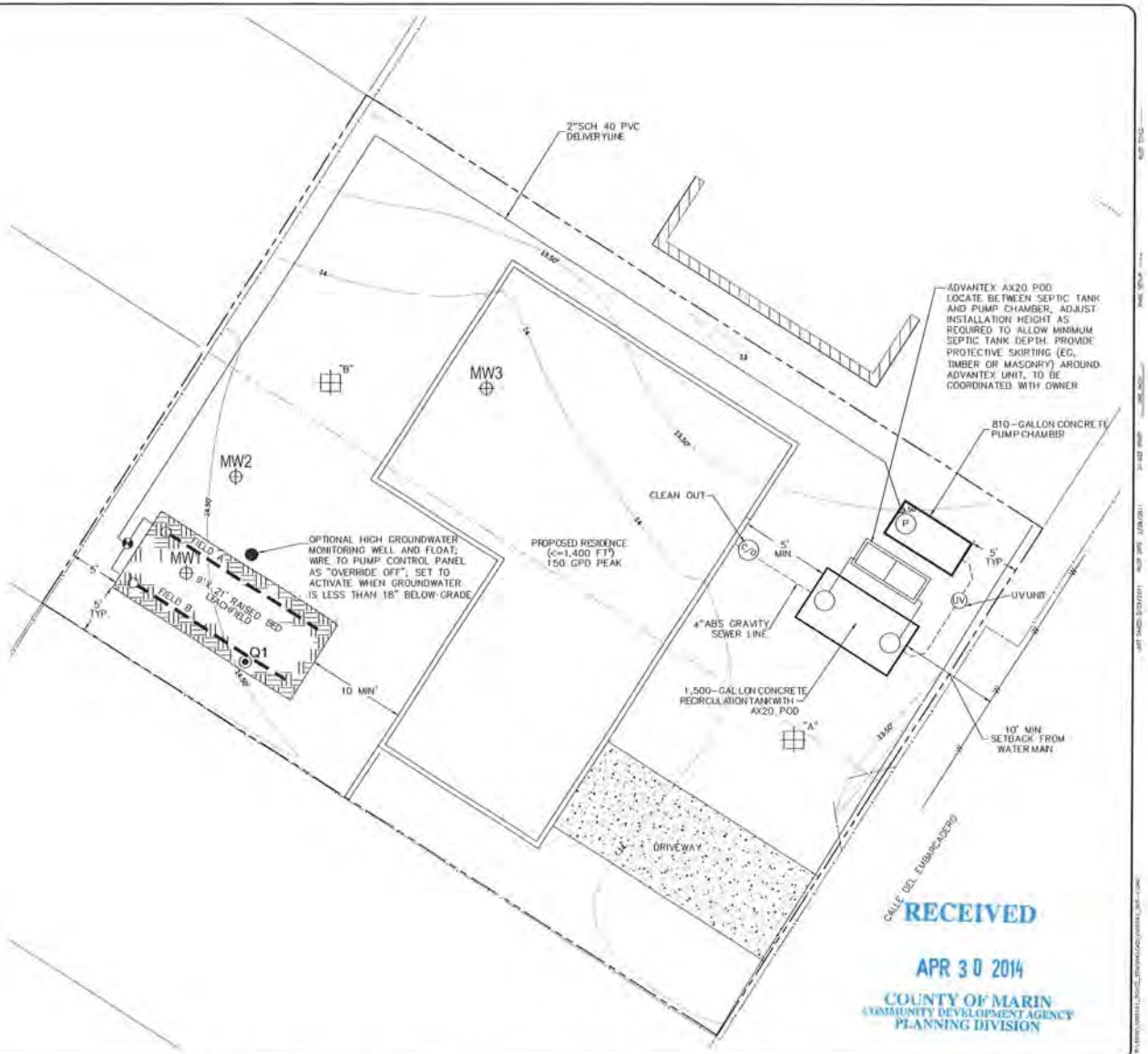
NOTES

TOPOGRAPHICAL SURVEY PROVIDED BY D. MATTESON, 02/2011
ELEVATION IS NAVD 88

DESIGN IS ADAPTED AND UTILIZES DETAILS FROM PLANS PREPARED BY ECKMAN ENVIRONMENTAL, DATED JUNE 3, 2010

SCALE & NORTH ARROW

0' 5' 10'
2.5'
SCALE: 1" = 5'



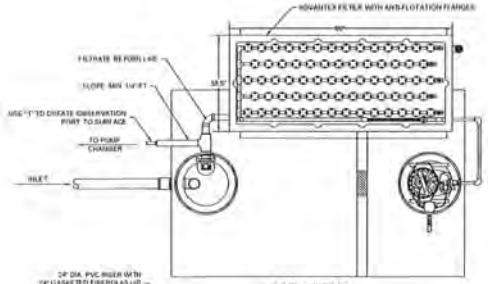
SUZANNE ROYCE
APN 195-132-03
STINSON BEACH, CA

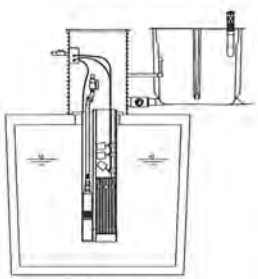
QUESTA Civil Environmental & Water Resources
(510) 234-6114
FAX (510) 234-7415
P.O. Box 70356 1220 Rickyard Cove Road Point Richmond, CA 94807

Design:	NH
Drawn:	MFJAM
Checked:	NH
Appr'd:	NH

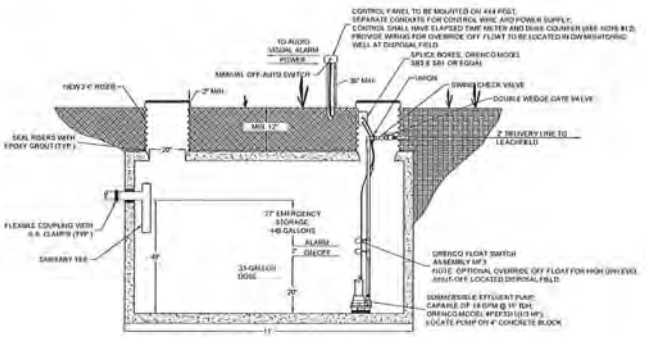
SEWAGE DISPOSAL PLAN
SITE PLAN
CALE DEL EMBARCADARO (UNDEVELOPED LOT)
STINSON BEACH, CA

Size: D | Project: 10003101
Scale: AS NOTED
Date: 03/26/2011
Sheet: 1 OF 3

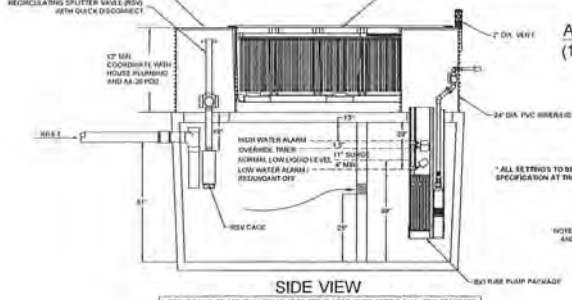




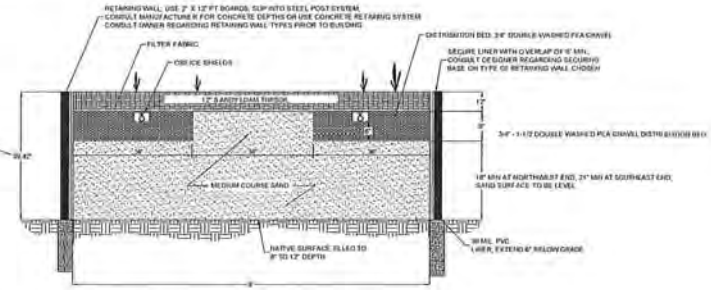
ADVANTEX UNIT AX20 MODE 3B (1,500 GALLON TANK) 1



810-GALLON PUMP CHAMBER 2

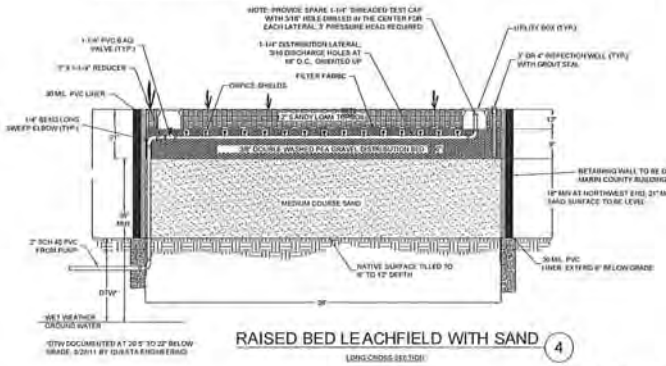


NOTE: DRAWINGS ABOVE SHOW AX-20 FILTER PLACED OVER SEPTIC TANK PER STANDARD MANUFACTURER'S DETAILS. IN THIS APPLICATION THE AX-20 SHALL BE PLACED BETWEEN SEPTIC TANK AND PUMP CHAMBER AS SHOWN ON THE PLAN (SHEET 1), AND SHALL BE INSTALLED TO EXTEND ABOVE GRADE AS REQUIRED TO ALLOW MINIMUM SEPTIC TANK DEPTH. CONTRACTOR SHALL PROVIDE PROTECTIVE SKIRTING (E.G., TIMBER OR MASONRY) AND BACKFILL AROUND AX-20/FILTER. TO BE COORDINATED WITH OWNER



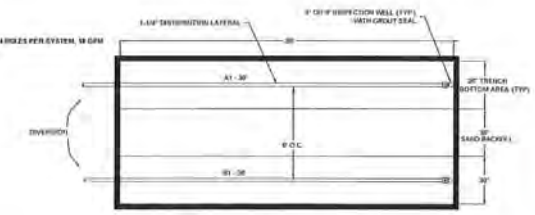
RAISED BED LEACHFIELD WITH SAND 3

CROSS SECTION



RAISED BED LEACHFIELD WITH SAND 4

LONG CROSS SECTION



RAISED BED LEACHFIELD WITH SAND 5

TOP VIEW

NOTE: ADAPTED FROM PLANS BY ECKMAN ENVIRONMENTAL, DATE 6/3/2010

RECEIVED
APR 30 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

SUZANNE ROYCE

APN 195-132-03
STINSON BEACH, CA

QUESTA
Civil Environmental & Water Resources
P.O. Box 78356 1220 Brickyard Cove Road Point Richmond, CA 94807

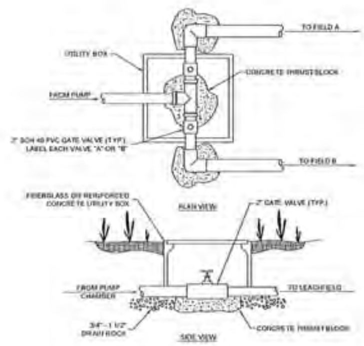
Std	Rev	Date	By	Description	Appd

Design: NNH
Drawn: MWF
Checked: PSP
Appvd: NNH

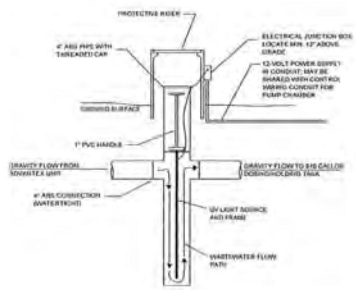
ON-SITE SEWAGE DISPOSAL PLAN
CONSTRUCTION DETAILS
CALLE DEL EMBARCADERO (UNDEVELOPED LOT)
STINSON BEACH

Size: D | Project: 1000181
Scale: 1" = 5'
Date: 6/6/2011
Sheet: 2 OF 3

CONSTRUCTION SPECIFICATIONS

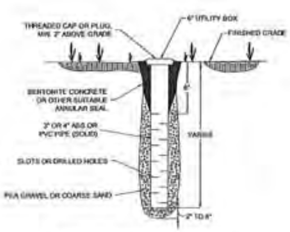


DIVERSION VALVE (6)



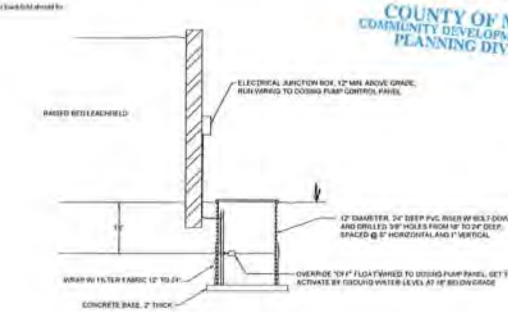
(7)

SALCOR WASTEWATER UV DISINFECTION UNIT- AC VERSION-MODEL 3G
(packaged unit manufactured by Salcor Eng. INC.)



MONITORING WELL (8)
(LOCATE PER DISTRICT REQUIREMENTS)

RECEIVED
APR 30 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION



HIGH GROUNDWATER FLOAT SWITCH (9)
(OPTIONAL)

NOTE: ADAPTED FROM PLANS BY ECKMAN ENVIRONMENTAL DATED 6/3/2010

SUZANNE ROYCE

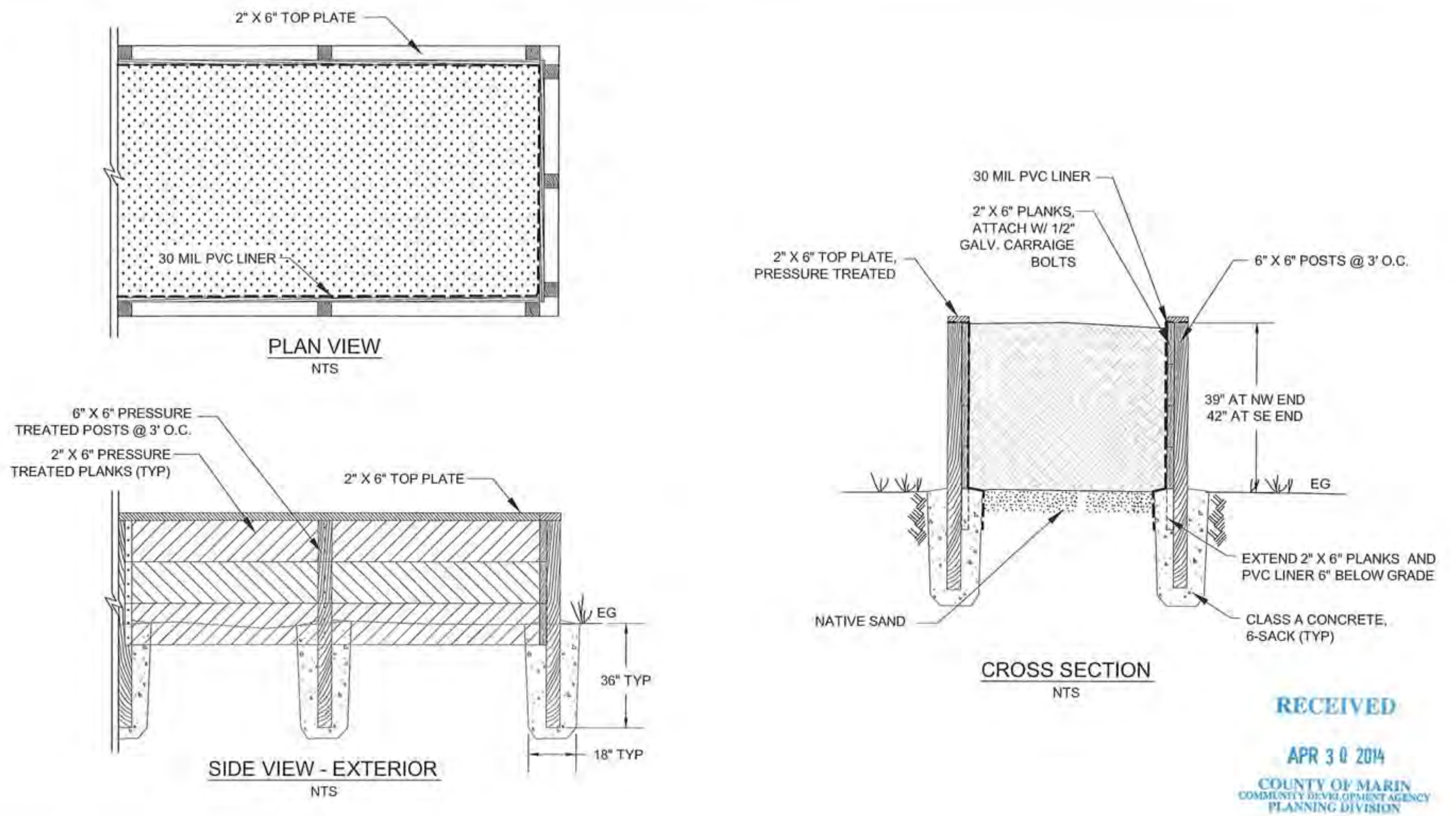
APN 195-132-03
STINSON BEACH, CA

QUESTA
Civil Environmental & Water Resources
P.O. Box 70356 1220 Brickyard Cove Road Point Richmond, CA 94807

Design	NNH
Drawn	MWF
Checked	PSP
Apprvd	NNH

ON-SITE SEWAGE DISPOSAL PLAN
DETAILS AND SPECIFICATIONS
CALLE DEL EMBARCADERO (UNDEVELOPED LOT)
STINSON BEACH

Size	Project
D	1000181
Scale	NO SCALE
Date	6/6/2011
Sheet	3 OF 3



RECEIVED
APR 3 0 2014
COUNTY OF MARIN
COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

HJORTH PROPERTY
CALLE DEL EMBARCADERO
STINSON BEACH, CALIFORNIA

QUESTA ENGINEERING CORP
Civil Environmental & Water Resources
P.O. Box 70356 1220 Brickyard Cove Road Point Richmond, CA 94807

Sht	Rev	Date	By	Description	App'd

Design: MW
Drawn: AM
Checked: PP
Appr'd: PP

RAISED BED RETAINING WALL DETAILS
STINSON BEACH, MARIN COUNTY

FIGURE 1

IF BAR DOES NOT MEASURE 1" DRAWING IS NOT TO SCALE — ADJUST ACCORDINGLY

RECEIVED
DEC 0 8 2015
CALIFORNIA
COASTAL COMMISSION

COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

NOTICE OF FINAL LOCAL (BOARD OF SUPERVISORS) DECISION

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan Section

SENT BY CERTIFIED MAIL

December 4, 2015

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

FINAL LOCAL ACTION NOTICE
REFERENCE # 2-MAR-15-1117
APPEAL PERIOD 12/9/15 - 12/22/15

Attention: Coastal Planner

Applicant's Name:	**Heidi Hjorth** **8 Brooke Circle** **Mill Valley CA 94941**
Coastal Permit Number:	**CP 2014-0051**
Assessor's Parcel Number:	**195-132-03**
Project Location:	**4 Calle del Embarcadero, Stinson Beach**
Determination:	**Approved With Conditions** **(Minutes of the November 17, 2015 Board of Supervisors' hearing are attached specifying action and applicable Conditions 1 - 8.)**
Decision Date:	**November 17, 2015**
County Appeal Period:	**Five (5) working days**

Local review is now complete.

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

If you have any questions regarding this project, please contact Jocelyn Drake at (415) 473-6245.

Sincerely,

Jocelyn Drake

Jocelyn Drake
Planner

Attachment: BOS resolution

3501 Civic Center Drive · Suite 308 · San Rafael, CA 94903-4157 · 415 473 6269 T · 415 473 7880 F · 415 473 2255 TTY · www.marincounty.org/plan

22.56.080 APPEALS TO THE CALIFORNIA COASTAL COMMISSION

For those coastal project permits which are approved for developments defined as "appealable" under California Public Resources Code, Section 30603 (a), an appeal may be filed with the California Coastal Commission by: (1) an aggrieved party: (2) the applicant; or (3) two members of the coastal commission. Such appeals must be filed in the office of California Coastal Commission not later than 5:00 p.m. of the tenth working day following the date of action from which the appeal is taken. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the county appellate body (or bodies) as established in Section 22.56.074 of the Marin County Code to be considered an aggrieved party.

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 2015-134

A RESOLUTION DENYING THE HURLEY, LOWRY, ET AL. APPEAL AND CONDITIONALLY APPROVING THE HJORTH COASTAL PERMIT 14-16
4 CALLE DEL EMBARCADERO, STINSON BEACH
ASSESSOR'S PARCEL 195-132-03

* *

SECTION I: FINDINGS

I. WHEREAS, Heidi Hjorth, has applied for a Coastal Permit to construct a new, 1,400 square foot residence with an attached 535 square foot garage, on a 4,800 square foot lot. The proposed floor area ratio will be 29.2%. The structure will reach a maximum height of 25 feet and have the following minimum setbacks: 1) 25 feet from the easterly front property line (19 feet from the unenclosed, covered porch and 15 feet from the start of the steps); 2) approximately 19 feet 7 inches from the westerly rear property line; 3) 6 feet from the northerly side property line; and 4) 6 feet from the southerly side property line. Other proposed improvements include a gravel drive, deck space, 6 foot wood fence, propane tank, and a septic system located a minimum of 5 feet from the front property line. A Coastal Permit is required because the project is located within the Coastal zone.

The subject property is located at **4 Calle del Embarcadero in Stinson Beach** and is further identified as **Assessor's Parcel 195-132-03**.

II. WHEREAS the Marin County Deputy Zoning Administrator held a duly-noticed public hearing on August 28, 2014, to consider the merits of the project and hear testimony in favor of and in opposition to the project. The project was conditionally approved with changes to reflect new plans sheets submitted to Planning on August 21, 2014 that included modifications to the proposed front deck, limiting its encroachment into the front setback to no greater than 6 feet, as well as new landscaping.

III. WHEREAS on September 4, 2014, Hurley, Lowry, et al. filed a timely appeal of the Deputy Zoning Administrator's decision to the Planning Commission. The appeal challenged the property is located within a 100-year flood zone, the neighborhood floods regularly, the Local Coastal Program restricts development in the 100-year floodplain, there needed to be clarity as to the distance between the lot and the top of bank of Easkoot Creek, and that the proposed design is out of character with the neighborhood and that the Visual Resources finding could not be made.

IV. WHEREAS the Marin County Planning Commission held duly noticed public hearings on October 27, 2014 and February 9, 2015 to hear testimony and consider the merits of the project and the Hurley, Lowry, et. al. Appeal, after which the Planning Commission issued a conditional approval of the project in accordance with the Interim Marin County Code (MCC) Section 22.56.130I (Coastal Permit).

V. WHEREAS on February 17, 2015, Hurley, Lowry, et. al. filed a timely appeal of the Planning Commission's decision to the Board of Supervisors, which asserts that: 1) the biological site assessments undertaken are inadequate; 2) the interpretation of

development in the Easkoot Creek floodplain should be based on Federal Emergency Management Agency's (FEMA's) definition for floodplains should apply since the Army Corps of Engineers never provided a definition; 3) the Planning Commission's decision nullifies the intent of the Local Coastal Plan; 4) restricting development on this lot would not constitute a regulatory taking; and 5) the project as conditioned is no longer consistent with the previously approved septic permit and that the original permit was issued in error due to incorrect information.

VI. WHEREAS the Marin County Board of Supervisors held a duly noticed public hearing on April 7, 2015 to consider the merits of the project and appeal, and hear testimony regarding the project. The item was continued to allow staff to research the Local Coastal Program policy restricting development in the 100-year floodplain of Easkoot Creek.

VII. WHEREAS Len Rifkind, representing Heidi Hjorth, requested a continuance of the Board of Supervisors hearing scheduled for May 12, 2015, to a date uncertain.

VIII. WHEREAS the Marin County Board of Supervisors held a duly noticed public hearing on November 17, 2015 to consider the merits of the project and appeal; additional information provided by staff on the Local Coastal Plan policy; and hear testimony regarding the project.

IX. WHEREAS the Marin County Board of Supervisors finds that the strict application of the land use policy at issue in this proceeding would constitute a potential facial regulatory taking of the property. It is reasonable to conclude that the property owner was unaware the lot would be essentially rendered unbuildable under LCP Unit I, Policy IV(30). The applicants paid fair market value for the property based upon the reasonable expectation a single family residence could be developed on the property. The property is located in a neighborhood with similar homes, including homes that have been recently remodeled or built, and the property owner paid a sum for the property that represents a normal price for a residentially developable property. The property is undeveloped, and is zoned primarily for single family residential development. In addition, permit records on file in the CDA show that at least 13 new residences and 15 substantial additions were approved within the Easkoot Creek floodplain since the County's Local Coastal Program was certified in the early 1980's. (At least two of the County-issued Coastal Permits for new residences were subsequently appealed to the Coastal Commission, but the applicability of the policy in question was not factored in the Commission's review of those appeals.) Therefore, the Marin County Board of Supervisors finds that it is reasonable to conclude that no amount of due diligence would have informed the property owner that application of Policy IV(30) might apply to this property in a way to render the site undevelopable with a reasonably sized standard single family residence. Further, the Marin County Board of Supervisors finds that the Hjorth Coastal Permit application complies with all other applicable policies and zoning regulations and disapproval of the project may constitute a potential regulatory taking. Finally, the project, as modified by the conditions of approval, allows construction of 1,100 square foot of living area, which is less than the median home size of 1,200 square feet (of living area) for the patios and calles in Stinson Beach. Therefore, the project would result in a residence that is comparable in living area to the average size of the neighboring residences.

X. WHEREAS the Marin County Board of Supervisors finds the Hurley, Lowry, Et Al. Appeal lacks sufficient bases and merit to overturn the Planning Commission's conditional approval of the Heidi Hjorth Coastal Permit for the reasons discussed below:

A. *The appellant challenges* the adequacy of the biological site assessments undertaken.

Response
The appellants assert the submitted biological site assessments are "flawed and contradictory". When concern about the conditions and complete accuracy of the originally submitted biological site assessment was raised at the Planning Commission in its October 27, 2014 public hearing, the applicant requested that the item be continued so that a second assessment could be taken and setbacks from all riparian areas could be definitively established. This was granted and the applicant hired a second biologist as well as a surveyor. The analysis found that *"there is no riparian vegetation or habitat within 50 feet of the vacant lot". . .* and *"the only riparian vegetation and habitat occurs northeast and across the roadway of Calle del Arroyo at Easkoot Creek, beyond 50 feet."* The assessment found that, per the California Coastal Commission's definition for riparian vegetation and habitat, that the site, including the adjacent ditch do not contain riparian plant species or vegetation. The second evaluation by the biologist and surveyor of the site resulted in the applicant making a slight modification in her proposed project and shift the house and other improvements of the lot so that they were outside of the identified 100 foot setback from the top of bank of Easkoot Creek. These changes were minor, as only about 2 feet of one corner of the residence and an underground tank were found to be encroaching into the required setback.

B. *The appellant challenges the interpretation of development in the Easkoot Creek floodplain and assertion that the Federal Emergency Management Agency's (FEMA's) definition for floodplains should apply since the Army Corps of Engineers never provided a definition. Response*
The appellants assert that the neighborhood is subject to extensive flooding and that the Local Coastal Plan (LCP) specifically calls for the limiting of development in areas such as these.

One of the requisite findings for a Coastal Permit includes consideration of "Geologic Hazard Areas". In this finding, Section 22.56.0130L(2)I of the Interim Development Code, states that for, *"Floodplain Development. Coastal project permit applications adjacent to streams which periodically flood shall include a site plan that identifies the one hundred-year floodplain (as described by the Army Corps of Engineers). Development of permanent structures and other significant improvements shall not be permitted within the limits of the one hundred-year floodplain."*

Identification, mapping, and description of 100-year floodplains was never done by the Army Corps of Engineers. The finding also does not state that flood zones and floodplains are equivalent nor that another agency has the authority to define these areas. Therefore the project is consistent with this finding. However, as stated in Finding IX above, a strict application of the above Code section to prohibit all development of the subject property could result in a regulatory takings that may be avoided by approval of the project if findings are made regarding the project's consistency with all other relevant County regulations.

C. *The appellant challenges the Planning Commission's decision nullifies the intent of the Local Coastal Plan.*

Response
The Planning Commission's decision to interpret the floodplain provision as written is consistent with the Interim Development Code and past precedent in the Coastal zone, including other development within this neighborhood. Based on the adopted residential zoning, it is unlikely that the California Coastal Commission intended to prohibit development in these areas, as it would effectively strip the development potential of the lots and constitute a regulatory taking by the agency that denied development for this reason.

D. *The appellant challenges that restricting development on this lot would not constitute a regulatory taking.*

Response
The appellants assert that restricting development would not constitute a regulatory taking. The property and others in the neighborhood are zoned C-R-2, which allows one-family and two-family dwellings as principally permitted uses. If it were interpreted that development of permanent structures and other significant improvements, were not to be permitted in areas defined as one hundred year floodplains by the Federal Emergency Management Agency, this would effectively prohibit any economic use of the property.

E. *The appellant challenges that the project as conditioned is no longer consistent with the previously approved septic permit and that the original permit was issued in error due to incorrect information.*

Response
The project has been reviewed and approved by the Stinson Beach County Water District. The applicant is modifying the project slightly to ensure the meeting of minimum setback standards from the top of bank of Easkoot Creek. The Water District standards must still be met, but there has been no indication that the project as now proposed violates the original approval and the applicant is still responsible for ensuring that the approved project substantially complies with that approval during the building permit stage.

XI. WHEREAS the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), per Section 15303, Class 3 of the CEQA Guidelines because it entails construction of a new residence in a residentially zoned district and would not result in potentially significant impacts to the environment.

XII. Whereas, the Marin County Board of Supervisors finds that the Mandatory Findings for a Coastal Permit per Section 22.56.130I of the Marin County Development Code can be made based on the following findings:

A. Water Supply

The project has been reviewed and accepted by the Stinson Beach County Water District. Therefore, the project is consistent with this finding.

B. Septic System Standards

The project has been reviewed and accepted by the Stinson Beach County Water District. The District has found the residence to be appropriate for the approved wastewater system design. In addition, the applicant must ensure that all required setbacks to all components of the septic system have been met. Therefore, the project is consistent with this finding.

C. Grading and Excavation

The property has flat to gentle slope conditions, and construction of the new residence will involve little site disturbance. As such, the project, as designed, will keep new grading to a minimum. Therefore, the project is consistent with this finding.

D. Archaeological Resources

A review of the Marin County Archaeological Sites Inventory indicates that the subject property is considered to be in an area of high archaeological sensitivity. The project site however is in an already highly developed part of Stinson Beach and therefore discovery of archaeological resources on the site is unlikely. A cultural resources evaluation was also performed by Sally Evans, Archaeologist, with the Archaeological Resource Service who found no potentially significant cultural resources on the property. In addition, a standard condition of approval has been applied to the project requiring that in the event cultural resources are uncovered during construction, all work shall be immediately stopped and the services of a qualified consulting archaeologist be engaged to assess the value of the resource and to develop appropriate mitigation measures. Therefore, the project is consistent with this finding.

E. Coastal Access

The project site is not located adjacent to the shoreline and will therefore have no impact upon coastal access. Therefore, the project is consistent with this finding.

F. Housing

The proposed project will have no impact upon the availability of affordable housing stock within the Stinson Beach community because it does not involve removing any existing housing. Therefore, the project is consistent with this finding.

G. Stream and Wetland Resource Protection

As verified by a survey, second biological assessment, and relocation, the structure and site improvements will be located outside of the Easkoot Creek stream buffer and riparian areas. Therefore, the project is not subject to riparian protection policies. The project has also been conditioned to confirm at building permit that required creek and riparian area setbacks have been met. As it stands, the proposed new residence would be located within the same general area that has already been developed with other single-family residences. Therefore, the project will not result in any additional impact upon stream or wetland resources and will comply with the LCP's riparian protection policies.

H. Dune Protection

There are no natural dunes in the development area.

I. Wildlife Habitat

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. The applicant provided a biological assessment, prepared by Daniel Edelstein, Biologist. While the community of Stinson Beach is known to be home to numerous special status species and wildlife habitats, it was determined that no sensitive wildlife habitat existed on the property. Special status species known to live in the area include the Northern Spotted Owl and the Marin Hesperian. None of these species were found to occur on the property or would otherwise be impacted from the proposed project. Therefore the project is consistent with this finding. The project would not extend into the dunes or onto the beach past the current area of disturbance.

J. Protection of Native Plant Communities

Based on the biological site assessment prepared by Daniel Edelstein and review of the California Natural Diversity Database, this property does not contain any recognized protected native plant communities. Therefore, the project is consistent with this finding.

K. Shoreline Protection

The proposed project is not located adjacent to the shoreline or within a bluff erosion zone. Therefore, the project is consistent with this finding.

L. Geologic Hazards

The project site is located within one mile of the San Andreas Fault Zone and would be subjected to strong ground shaking during a proximate seismic event. The Marin County Community Development Agency – Building and Safety Division would determine seismic compliance with the California Building Code. In addition, as a condition of approval, the applicant shall execute and record a waiver of liability holding the County, other governmental agencies, and the public harmless of any matter resulting from the existence of geologic hazards or activities on the subject property.

M. Public Works Projects

The proposed project will not affect any existing or proposed local public works projects in the area. Therefore, the project is consistent with this finding.

N. Land Division Standards

No land division or property line adjustment is proposed as part of this project. Therefore, the project is consistent with this finding.

O. Visual Resources

The primary residence is consistent with the Interim Zoning Code standards for height in this zoning district. The development would not impact public views of coastal scenic resources. The project would not impair or obstruct public views of coastal scenic resources from any public street or public viewing location because it is located away from publicly viewable, visually prominent areas of Stinson Beach and the community. Furthermore, the project, as modified by conditions of approval that reduce the size of the residence and garage, and increase the building's setbacks to property lines, would be compatible with the scale of neighboring residences. The project, as modified by the conditions of approval, allows construction of 1,100 square foot of living area, which is less than the median home size of 1,200 square feet (of living area) for the patios and calles in Stinson Beach. Therefore, the project would result in a residence that is comparable in living area to the average size of the neighboring residences.

P. Recreation/Visitor Facilities

The project would not have any impact upon recreation or visitor facilities because it would be located within the existing development boundaries on the property and would maintain existing public access to the ocean and beach portion of the property.

Q. Historic Resource Preservation

The project site is not located within any designated historic district boundaries as identified in the Marin County Historic Study for the Local Coastal Program. Additionally, completion of the proposed work would not affect or impact the character of the community.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the project described in condition of approval 1 is authorized by the Marin County Board of Supervisors and is subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

SECTION III: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves the Hjorth Coastal Permit subject to the conditions as specified below:

CDA-Planning Division

1. This Coastal Permit approval authorizes the construction of a new, 1,100 square foot residence, with an attached 300 square foot garage on a 4,800 square foot lot. The floor

area ratio shall not exceed 22.9%. The structure shall reach a maximum height of 25 feet and have the following minimum setbacks: 1) 25 feet from the easterly front property line (19 feet from the unenclosed, covered porch); 2) 20 feet from the westerly rear property line; 3) 12 feet from the northerly side property line, and no portion of the structure (or other proposed improvements) may encroach into the 100 foot setback from the top of bank of Easkoot Creek; and 4) 8 feet from the southerly side property line. Other approved improvements include a gravel drive, deck space, 6 foot wood fence, propane tank, and a septic system.

The property is located at **Assessor's Parcel 195-132-03**. Unless a public emergency services provider recommends otherwise or unique circumstances necessitate a change, the street address for the residence that is approved herein shall be **4 Calle del Embarcadero, Stinson Beach**.

2. Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "HJORTH/NATALE Stinson Beach House," consisting of eight sheets prepared by WA design, dated February 1, 2014 with noted revisions dated May 1, 2014 and received April 30, 2014, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.

    a. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall relocate the front stairs so that no portion of them taller than 18 inches above finished grade, extends more than 6 feet into the front setback (19 feet from the front property line).

    b. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall incorporate the proposed changes that were submitted to the Planning Division on August 21, 2014 and November 24, 2014 into the submitted building permit plan set, including showing on the site plan the modified residence and other improvements being beyond the 100-foot Easkoot Creek buffer.

    c. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall modify the site plan to increase the building setbacks as follows: increase the northern side yard from 6 feet to 12 feet; increase the southern side yard setback from 6 feet to 8 feet; and increase the western rear yard setback from 16 feet to 20 feet, as measured from the first story and 30 feet, as measured from the second story. These changes shall be submitted for review and approval by the Director before issuance of a building permit.

    d. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall modify the project plans to reflect a reduction in floor area by 300 square feet and a reduction in the garage area by 235 square feet for a total of 1,100 square feet of floor area and 300 square feet of garage area. These changes shall be submitted for review and approval by the Director before issuance of a building permit.

    e. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide written documentation from the Stinson Beach Water District indicating the District has reviewed the revised project plans and has determined the plans are in conformance with the Water District's regulations.

f. BEFORE FINAL INSPECTION, the applicant shall call the Planning Division to arrange for a site visit to confirm the installation of the proposed landscaping, reflected in the plans submitted to the Planning Division on August 21, 2014 and November 24, 2014.

g. BEFORE FINAL INSPECTION, the applicant shall document that the height of the septic system is no higher than 18 inches above finished grade.

3. The project shall conform to the Planning Division's "Uniformly Applied Conditions 2015" with respect to all of the standard conditions of approval and the following special conditions: 4, 9, 10, 11, and 13.

Marin County Department of Public Works

4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide more details on the drainage and grading plan:

   a. The plan shall show and label the limit of disturbance. Provide the total area to be disturbed;

   b. Provide proposed cut and fill volumes. Clearly indicate on the plans that any off-haul will be disposed of in a legal manner. The plans indicate approximate 200 cubic yards of fill and approximate 62 cubic yards is used to raise the subgrade of the structure. Indicate where the rest of the fill is going to go. Provide proposed contours if necessary;

SOME ADDITIONAL REQUIREMENTS FOR RESIDENTIAL CONSTRUCTION PROJECTS IN A HAZARDOUS FLOOD ZONE AS MAPPED BY FEMA

5. The property is located within the Special Flood Hazard Area Zone AO, as mapped by FEMA on their current Flood Insurance Rate Map (FIRM) panel number 0444D, which became effective on May 4, 2009. Zone AO is an area subject to inundation by the 1% annual chance shallow flooding (usually sheet flow on sloping terrain), where FEMA has determined the average depth to be three feet above highest adjacent grade. **BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall add a note to the plans which indicates that the entire structure is located in the Special Flood Hazard Area Zone AO and that the BFE = 3 feet above highest adjacent grade.**

6. BEFORE ISSUANCE OF A BUILDING PERMIT, the plans and elevation views shall provide the Base Flood elevation (BFE) and the elevation of the proposed first floor and existing outside adjacent grade. Elevations shall use the NAVD 1988. Also, per MCC 23.09.033(b)(2), provide the proposed elevation in relation to NAVD to which any structure will be flood-proofed.

7. BEFORE ISSUANCE OF A BUILDING PERMIT, a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other

coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

8. BEFORE ISSUANCE OF A BUILDING PERMIT, the plans shall be certified to comply with a local flood-proofing standard approved by the Federal Insurance Administration.

SECTION IV: VESTING

Unless an extension to vest has been granted, any permit or entitlement not vested within two years of the date of the approval, November 17, 2017, shall expire and become void. The permit shall not be deemed vested until the permit holder has actually obtained any required Building Permit or other construction permit and has substantially completed improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval. An extension through a public hearing to vest may be granted for a maximum period of four years following the original expiration date pursuant to the requirements of Interim Zoning Code section 22.56.120I.

SECTION V: ADOPTION

ADOPTED at a regular meeting of the Marin County Board of Supervisors, State of California, on the 17th day of November, 2015.

AYES:	SUPERVISORS	Judy Arnold, Steve Kinsey, Damon Connolly, Kathrin Sears, Katie Rice
NOES:	NONE	
ABSENT:	NONE	

KATIE RICE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

Attest:

CLERK

RECEIVED
DEC 22 2015
CALIFORNIA COASTAL COMMISSION

STATE OF CALIFORNIA -- THE RESOURCES AGENCY
EDMUND G. BROWN JR., Governor

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: KATHLEEN Hurley, ERIKA Lowry, ET AL

Mailing Address: 6114 La Salle Ave #307

City: OAKLAND Zip Code: 94611 Phone: 510 712 0852

SECTION II. Decision Being Appealed

1. Name of local/port government: MARIN County

2. Brief description of development being appealed:
Appeal from Coastal Permit Decision of Marin County CP 2014-0051 Resolution 2015-134

3. Development's location (street address, assessor's parcel no., cross street, etc.):
VACANT lot to be assigned #4 Calle del Embarcadero, Stinson Beach cross street Calle del Arroyo APN 195-132-03

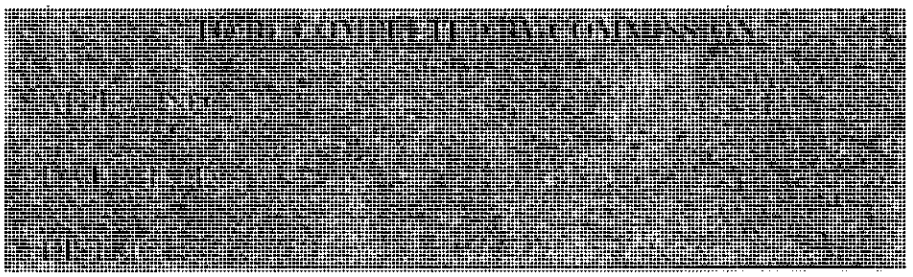
4. Description of decision being appealed (check one.):

☐ Approval; no special conditions

☒ Approval with special conditions:

☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: November 17, 2015

7. Local government's file number (if any): COASTAL PERMIT 2014-0057

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Heidi Hjorth
8 Brooke Circle
Mill Valley, CA 94941

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Richard Kohn
5 Ahab Drive
Muir Beach, CA 94965

(2) Scott Tye, Surfriders
PO Box 885
Stinson Beach, CA 94970

(3) Erika and Stephen Lowry
P.O. Box 147
Stinson Beach CA 94970

(4) Doug Kacpa —

Bruce Wachtell PO Box 888 Stinson Beach CA 94970
Susie Weaver PO Box 906, Stinson Beach 94970
Donna Funicello 3 Belvedere WA4 Belvedere 94920

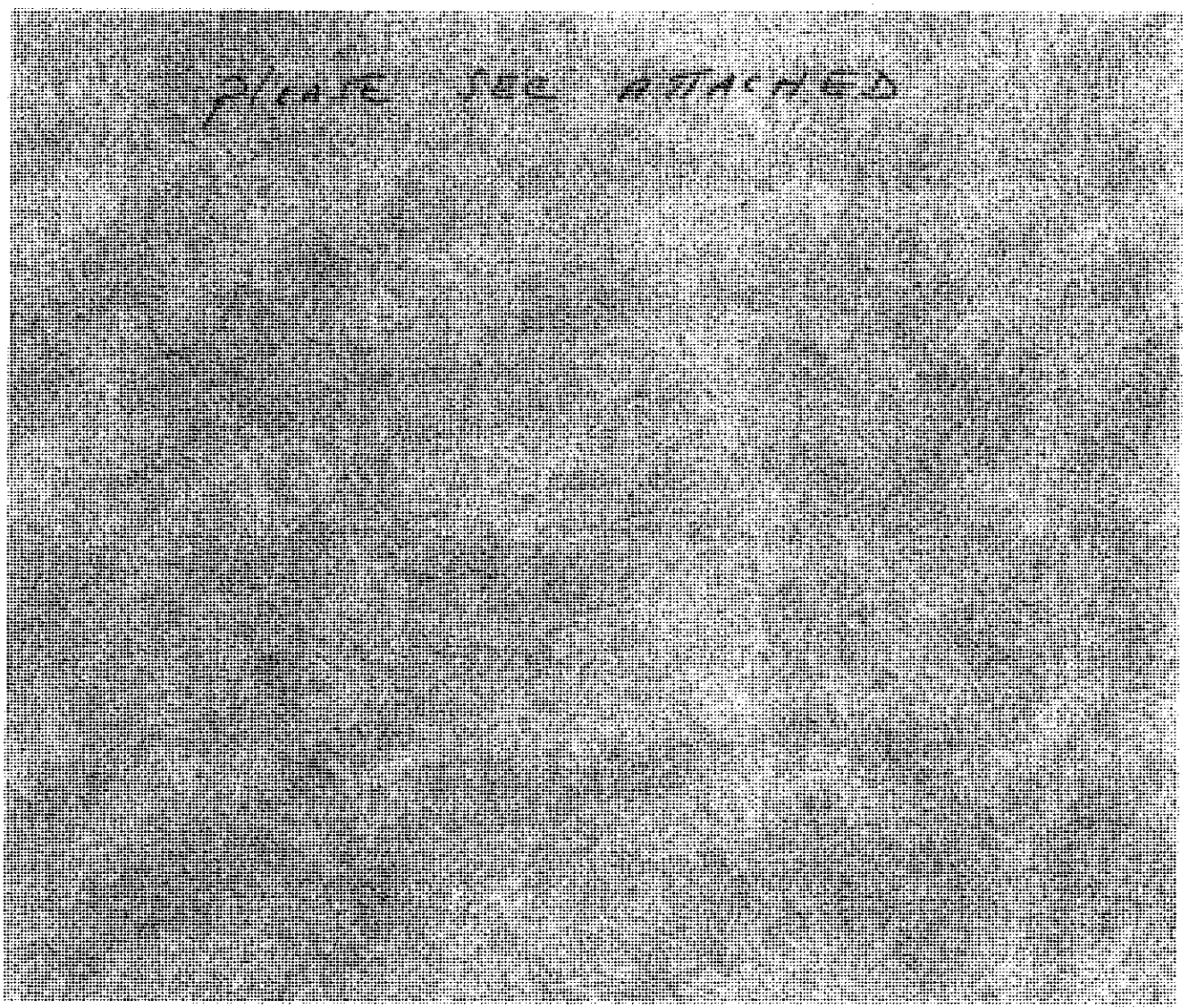
(Others can be added)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal.** Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature of Appellant(s) or Authorized Agent

Date: 12.21.15 11-17-2015 & Affirmed 12/21/15

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

_____
Signature of Appellant(s)

Date: _____

Appeal from the Coastal Permit Decision of Local Government (p.3)

Section IV: Reasons Supporting this Appeal

INTRODUCTION

Directly at issue in this appeal is whether the applicant Heidi Hjorth will be able to build a new house within the 100-year floodplain of Easkoot Creek in Stinson beach in violation of a flat prohibition of such development in the certified Land Use Plan and Interim Zoning Ordinance. But the ramifications of this decision extend far beyond this particular case: the decision undermines land use regulation in the coastal zone.

At issue is whether, in order to avoid a potential constitutional taking claim, the BOS can effectively amend provisions of the LCP without going through the amendment procedures required by law. This appeal will determine to what extent taking issues can be permitted to influence a decision by local governmental agencies to grant coastal permits under the Coastal Act. In addition to the question of the BOS's authority, the record gives rise to many legal and factual issues regarding the BOS' decision with far reaching implications for other applications for permits in the coastal zone.

All development in the coastal zone requires a coastal development permit. Public Resources Code (Coastal Act) section 30600(d).[1] Pursuant to section 30604(b) of the Act, "a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program." (See also section 30600.5(c). The LCP for Unit 1 was adopted by the BOS and certified by the Coastal Commission as of April 1, 1980. The Land Use Plan and the Interim Zoning Regulation both prohibit development in the 100-year floodplain of Easkoot Creek. After a public hearing on November 17, the BOS adopted a Resolution granting a CDP, with conditions, to Ms. Hjorth to build a single-family residence on an undeveloped lot in the 100-year floodplain.

The issues raised by the appeal are substantial when measured against the five factors applied by the Coastal Commission to determine significance.[2]

---

[1] No claim has ever been made that the lot in question is within an exclusion zone allowed by Public Resources Code sec. 30610.1 and 30610.2 or that procedures required for such an exclusion were complied with.

[2] (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....;(2).The extent and scope of the development as approved or denied by the local government; (3) The significance of the coastal resources affected by the decision; (4) The precedential value of the local government's decision for future interpretations of its LCP; and (5) Whether the appeal raises only local issues, or those of regional or statewide significance.

Jurisdiction

The undeveloped lot at issue lies between the first public road and the sea. Coastal Act section 30603. As persons who appeared and submitted written and/or oral testimony in opposition to the project before the DZA, Planning Commission and BOS, the appellants are "aggrieved persons" entitled to appeal. California Code of Regulations sec.13111.

LCP Provisions Directly In Issue

The Land Use Plan states: "Development shall not be permitted within the 100-year floodplain of Easkoot Creek..." LUP p.80.

Section 22.56.0130L(2) of the Interim Zoning Ordinance states: "Floodplain Development: Coastal project permit applications adjacent to streams which periodically flood shall include a site plan that identifies the one-hundred year floodplain (as described by the Army Corps of Engineers). Development of permanent structures and other significant improvements shall not be permitted within the limits of the one-hundred year floodplain."

The BOS Decision and Resolution

The BOS issued a Resolution dated November 17, 2015 although it was not sent to the Coastal Commission until on or after December 5, 2015 and was not received by the Commission until December 8, 2015. The Resolution denied the Hurley appeal and granted a coastal permit with conditions. The Resolution revives an argument previously rejected by the Coastal Commission staff that the prohibition on development in the 100 year floodplain is inoperable [Section 1, Findings, par. X (B)(C)(and (D)] and reaches many conclusions without an evidentiary basis, as required by county regulations. [Section 1, par. IX]. It reaches the conclusion that the proposed residence is not subject to riparian protection policies in contradiction to compelling evidence in the record [Section 1, par. XII(G)]. In effect, it grants an illegal variance to allow the project to proceed. As explained below the issues presented by this case meet the substantial question factors justifying *de novo* review of the BOS decision by the Commission.

Issues presented for appeal

(1)The coastal permit granted by the BOS is void because it does not conform to the standards set forth in the certified LCP. California Coastal Act Sec. 30603, subd. (b)(1)

Section 22.06.010I of the Interim Zoning Ordinance states:

"All departments, officials and public employees of the county who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of this title. Any permit or license, if issued in conflict with the provisions of this title, shall be null and void."

This provision is ministerial and allows for no discretion. *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.2d 626, 642-43. Thus, even if the agency had the authority to exercise discretion to depart from the strict language of the LCP prohibition in order to avoid a taking, it could not use it.

The phrase "this title" refers to Title 22 of the Interim Zoning Ordinance. See, Section 22.04.010l)

Section 22.56.0130L(2), quoted above, plainly prohibits the development of permanent structures within the limits of the 100-year floodplain. While the CDA argued that the provision was inoperative because mapping was done by FEMA and not the Army Corps of Engineers, the CCC staff rejected that theory. Another argument the CDA raised in an attempt to distinguish between floodplains and floodways, met the same fate. The CDA has informed property owners and residents of Stinson Beach who reside in the affected areas that it intends to comply with the Commission staff's interpretation. (See attached letter to the community dated July 28, 2015, partial transcript of his comments to the Stinson Beach Village Association and April 28, 2015 letter from Marin County CDA Director seeking clarification regarding the floodplain vs. floodway that proceeded the reported change in County interpretation.)

Furthermore, the contention that FEMA did not supplant the Army Corps of Engineers is internally inconsistent with paragraph 5 of Section III of the Resolution which states that the property is located within the Special Flood Hazard Area Zone AO, as mapped by FEMA and requires the applicant to acknowledge that fact.

Thus, the action of the BOS in granting a CDP for the Hjorth project is null and void ab initio.

Section 1 paragraphs X(B), X(C) and X(D) raise a substantial question for the Coastal Commission because the Commission staff has already rejected that argument. The California Coastal Commission has jurisdiction over this issue because it is the administrative body with the ultimate and final responsibility for approving the project, and must be raised here to prior to any court action. *McAllister v.County of Monterey* (2007) 147 Cal.App.4th 253, 285-287.

(2)By granting the CDP, the BOS violated the Coastal Act by nullifying LCP provisions

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 Resolution is to nullify the LCP provisions prohibiting development in the 100-year floodplain. It is literally impossible for the BOS to find that "the proposed development is in conformity with the certified local coastal program," as required by Section 30604(b) of the Coastal Act. Indeed, at an earlier hearing in the Hjorth matter, when the BOS was prepared to deny the application, Kinsey said that if the BOS could not read the plain language of the LCP, it would look silly if an appeal was taken to the Coastal Commission. ("But, what I think is most troubling to me is that as a board representative to the State of California's California Coastal Commission we have a Local Coastal Program that is very explicit here. It just simply says development shall not be permitted within the 100-year flood plain of Easkoot Creek." – Sup. Kinsey April 7, 2015 BOS Hearing)

Ironically, the county is in the process of seeking to amend the LCP provision prohibiting development in the Easkoot Creek floodplain using the correct procedures. Its decision in this case is premature.

(3)The BOS in effect granted an illegal variance in violation of Section 65906 of the Coastal Act and Interim Zoning Regulation sec. 22.86.010l.

Section 65906 of the Coastal Act authorizes the use of variances where, "because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." However, *"A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property."*

As to the first sentence, all properties that are similarly situated are treated the same. In a bulletin dated July 28, 2015, and at a public meeting held on November 14, 2015, the CDA informed property owners in the affected areas that, based upon guidance from the Coastal Commission regarding the proper interpretation of the LCP, the new interpretation would be applied uniformly. By granting a coastal permit to Ms. Hjorth, the BOS is giving her special treatment not available to other similarly situated landowners.

The second sentence makes clear that the statute is designed for a situation where the zoning ordinance permits the intended use but for some technical reason there is an obstacle when it is applied to a particular case. In such a case, the provision may be

liberally construed to allow the project to proceed. That is not the case here: the LCP prohibits the development, period.

Section 22.86.010I of the interim Zoning Ordinance implements the statute. It gives the DZA authority to grant an adjustment or variance as set forth in four subdivisions "and no further." Subdivision 1 allows a variance "To vary or modify the strict application of any of the regulations or provisions contained in this title in cases in which there are practical difficulties or unnecessary hardships in the way of such strict application." However, Subdivision 4 states:" The provisions of Section 22.56 and 22.57 may not be amended or modified except as provided by procedures for such amendments as approved by the California Coastal Commission. A variance or adjustment to the requirements of any C district shall be granted only when, in addition to the other requirements of this chapter, the variance or adjustment is found consistent with requirements of Chapter 22.56 and the goals and objectives of the local coastal plan...."

In the first place, the BOS has only appellate authority to consider a request for a variance. Interim Zoning Ordinance Section 22.86.025I. Any request for a variance must be made in the first instance to the DZA. Section 22.86.010I, 22.86.020I. So, if the BOS was in fact granting a variance without saying so, it was without authority to do so.

Furthermore, it is clear that allowing a variance in this case (which involves a parcel in the C District) would be inconsistent not only with the Land Use Plan's prohibition of development in the 100-year flood plain of Easkoot Creek but also with Section 22.56.0130L(2) of the Interim Zoning Ordinance. Even if the BOS was, in effect, granting a variance for this project *sub silencio*, it would be illegal and null and void as discussed above. And finally, as also separately discussed, a variance will not be permitted to amend Chapter 56 except by procedures authorized by the Coastal Commission.

(4)The BOS lacks authority to decide constitutional taking claims

The BOS exceeded its authority to grant coastal permits in violation of *Sierra Club v. California Coastal Commission* (1993) 12 Cal.App.4th 602, *Healing v. California Coastal Commission* (1994) 22 Cal.App.4th 1158 and *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, *cert. denied*, 513 U.S. 1184 (1995) in the guise of making a decision based upon a potential taking claim. This is circular and speculative reasoning, prohibited by *LT-WR, L.L.C. v. California Coastal Commission* (2007) 152 Cal.App.4th 770.

(5)The county has no regulation setting forth any standards by which to determine taking issues and its decision in this case was arbitrary and capricious

The Land Use Plan does not contain any reference to Section 30010 of the Coastal Act, nor does the Interim Zoning Ordinance or any other ordinance or regulation set forth any standards by which to assess taking claims. For example, sometimes the county refers to a "potential" taking and sometimes a "likely" taking. The dictionary definition of "potential" is "possible." The definition of "likely" is "probable." Unlike courts of law which have well defined terms involving burden of proof and standards of review, the county can apply any meaning it likes. So, for example, it is unclear whether the burden is possible, probable, substantial evidence, preponderance of the evidence or beyond a reasonable doubt (i.e., 51 per cent) all of which are standards employed by the courts in different contexts. The consequence is that zoning regulations can be nullified at the whim of the CDA or the BOS. The lack of standards makes the BOS decision arbitrary and capricious.

Furthermore, the courts have made clear that nuisance is a complete defense to a taking. How does the county assess whether nuisance trumps a taking in this case? This can only be determined in a trial. Supervisor Kinsey stated as a conclusion that since there had always been flooding, an increase in flooding didn't matter.[3] That personal view was purely a conclusion without any evidence to support his belief that additional flooding caused by the development would be negligible for the neighbors or the community at large. As such, it was arbitrary and capricious. There was no adequate drainage plan or study prior to approval. In addition, Appellant Hurley submitted to the record via Power point presentation photos and a video taken on her neighboring property showing multiple rivulets of water coursing from the direction of the Hjorth lot south to north as the lot drained.

(6)Even assuming the BOS had authority to decide constitutional taking claims, it failed to make findings of fact required by Interim Zoning Regulation section 22.56.095l

Section 22.56.095l of the Interim Zoning Ordinance states: "A coastal project permit shall be approved only upon findings of fact establishing that the project conforms to the requirements and objectives of the local coastal program."

Section 1 paragraph IX of the Resolution purports to set forth "Findings." But these are not findings of fact. The BOS made its decision based upon conclusions, not evidence, to substantiate the taking argument made by the CDA (not the applicant). These include

[3] Supervisor Kinsey said: "And I reject the assertion by the appellants and their advocates that this could be a nuisance, that this would add to the flooding problems in that area and the incremental of this addition in the historically developed subdivision as you see from the photographs that the appellants themselves showed that the water stands. It's not that any absence that the water would dissipate immediately. It is negligible in terms of the flooding nuisance that would be created."

unsubstantiated conclusions that the property in question would have no economic value, that the applicant could not have anticipated that the prohibition would be applied to her, fairness vis a vis other properties, and most importantly, that allowing the project to be built would not exacerbate flooding of private or public areas.

Even in cases where the applicant claims that a regulation results in a facial taking, "[W]hether the owner has been denied substantially all economically viable use of the property is a factual inquiry that requires the analysis of such factors as the economic impact of the regulation, interference with the landowner's reasonable investment-backed expectations and the character of the governmental action. " *McAllister v. California Coastal Commission* 169 Cal.App.4th 912, 940; *Buckley v. California Coastal Commission* (1998) 68 Cal.App.4th 178, 193.

Thus, even assuming for the sake of argument that the BOS is vested with authority to adjudicate constitutional taking issues, it is required to make factual findings that support its decision and not state mere conclusions. See, *McAllister v. California Coastal Commission* 169 Cal.App.4th 912, 939-942. For example, the question of whether Ms. Hjorth knew or should have known about the restriction would require inquiry into what the seller and the title Insurance company said and whether she acquired the property at a reduced price because of the prohibition in the LCP. The record contains no evidence that she paid fair market value, as stated in the Resolution.

Also, the "finding" that no amount of due diligence would have informed the property owner" that the lot could not be developed is absurd: Ms. Hjorth is a real estate professional and her website states that she has special expertise with regard to title issues. It is inconceivable that she failed to know or she should have been aware of the prohibition. No reasonable person, especially a professional real estate broker, could rely on the fact that the CDA had illegally permitted development in the past where the prohibition is so clear. Also, unlike many cases involving the enactment of new regulations *after* property is acquired, in this case the prohibition on development in the 100-year floodplain had been on the books long before the applicant acquired the property. This is obviously a relevant factor, ignored by the BOS. See, *Good v. United States,* 189 F.3d 1355, 1361 (9th Cir. 1999). The point here is that the BOS failed to explore or consider all the relevant factors regarding the applicant's reasonable investment-backed expectations and other issues.

With respect to flooding, Supervisor Kinsey essentially said that since the area had always flooded, more flooding won't hurt. Ironically, on the same day, the Supervisor's heard a report about the hazards of sea level rise particularly with respect to Stinson

Beach. In a public hearing on November 14, Supervisor Kinsey referred to Stinson Beach as "ground zero" of areas that would be affected by sea level rise.

In this connection, the county has proposed a "potential taking evaluation" as part of its LCP amendments. As *Healing v. California Coastal Commission, Hensler v. City of Glendale* and *LT-WR, L.L.C. v. California Coastal Commission hold*, the county is incompetent to make such decisions, potential or otherwise. Nevertheless, it constitutes an admission of the kinds of evidence that would be required to make such a determination. The proposed policy would require the applicant to submit twelve categories of evidence. This underscores the fact that even if it was within the authority of the BOS to make such a determination in this case, the record fails to show that the BOS considered the type of evidence that even the county deems relevant.[4]

While the facts may be specific to this case, the larger question is whether local governments can grant coastal permits without making detailed factual findings (which the Coastal Commission itself is required to make. Coastal Act sec. 30604 subd. (a)-(c); California Code of Regulations Sec. 13096, subd. (a)). That is a substantial question.

(7)The CDA improperly raised taking issues thereby acting as a surrogate for the applicant

Only the applicant can raise taking claims. The extraordinary thing about this case is that starting with the DZA, it was the agency and not the applicant who raised taking issues. This put the agency in the shoes of the applicant. The county should be in an adversarial position with respect to this issue. Taking law is so complicated that it is impossible to evaluate taking claims until the applicant sets forth the theory s/he relies on. That is another reason why taking claims can only be made to a court after the agency has reached a decision of how far its regulation goes.

The applicant's attorney submitted a letter dated November 16, 2015 to the BOS.[5] In it he conceded "[w]hether the County and the State has liability for a taking of property rights without compensation is absolutely the province of the courts." Her attorney also stated that "Our clients have zero desire to be a party to any litigation." Thus, it appears that the BOS granted a permit in response the CDA's premature and erroneous assumption that the applicant might pursue a taking claim in court, knowing that the applicant had no intention of pursuing judicial relief.

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[4] These include, among other things, "1. The date the applicant purchased or otherwise acquired the property, and from whom; 2. The purchase price paid by the applicant for the property; 3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time; and 8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware."

[5] This letter was neither posted on the CDA's website nor distributed at the hearing. Appellants only learned of the existence of the letter because Mr. Rifkind referred to it during his oral presentation. Appellants only saw the letter on November 20 after requesting a copy from the CDA staff.

As we argue elsewhere, in granting the permit the BOS in effect granted an illegal variance. The BOS has no discretion to grant permits in violation of the certified LCP. Its decision is therefore arbitrary and capricious.

(8) The BOS failed to address Design issues pursuant to Interim Zoning Regulation sec. 22.56.130I(0)(3)

Section 22.56.130I(0)(2) states:

"The height, scale and design of new structures shall be compatible with the character of the surrounding natural and built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places."

The Resolution addresses height and scale but does not address the design of the structure. The DZA stated that if this had been a planned project subject to design review, the Hjorth project "would never make it through design review." However, he did not apply section 22.56.130I(0)(2). Although the BOS imposed new conditions on the scale of the house, its fundamental design has not changed. It still includes numerous large windows, driveways, extensive decking that are atypical of the design of neighboring residences. The absence of any discussion of design fatally infects the Resolution. The importance of this issue goes beyond the facts of this particular case because the Coastal Commission needs to make a definitive statement that design review is not limited to planned projects, but rather applies to all new development in the coastal zone by virtue of section 22.56.130I(0)(2).

(9) Issues raised by Specific Provisions of the Resolution[6]

The Resolution fails adequately to address the appellants' concerns regarding the lack of competent environmental study; encroachments of riparian set-backs; encroachment on the 100-foot buffer zone between development and Easkoot Creek; and lack of an adequate drainage plan, i.e., to ensure that a higher elevation lot that floods will not drain out with higher force and impacts to adjoining lots, roads and the creek in a way that is no less impactful than before any development. The so-called Findings are deficient in the following respects:

Section 1 Par. IX. There are no facts to support the conclusion that the applicant was unaware that the lot was unbuildable under the LCP. Nor is there evidence to support the "Finding" that the applicant paid fair market value for the property. Appellants and

[6] In focusing on specific provisions, we try to avoid repeating points already made in paragraphs 1-8 above. However, in some instances we add greater detail.

several Stinson Beach neighbors/community members spoke or filed letters before the DZA and/or Planning Commission addressing the fact that the lot had been considered "unbuildable" for decades and that a former owner had tried for years to get it to percolate without success.[7] Questions exist among neighbors about the adequacy of the subdivision of the lot in 2006 from #2 Calle del Embarcadero in the transfer of two of three parcels to a neighbor. This raises the substantial question of whether agency decisions can be made on the basis of unsupported conclusions rather than evidence. Given the assertion (again, without identifying specific properties) that the county has allowed other projects to be built in the floodplain in the past, this appeal raises the important question of whether past violations of the LCP by the CDA justify future violations once the proper interpretation of a law becomes known.[8]

Section 1 Par. X. A. The appellant challenges the adequacy of the biological site assessments undertaken.

The response fails to mention that the concerns raised by the appellants at the October 27, 2014 about the accuracy of the biological site assessment proved to be well-founded. The biologist's claim that the project was more than 150 feet from Easkoot Creek was proved to be wrong by about 66 feet. Furthermore, the biologist, Daniel Edelstein[9], was forced to admit, under questioning by the Planning Commissioners, that he had visited the site for only a short period during the dry season, when one would not expect to find fish, amphibians or other protected species in the habitat. His report and methodology were thoroughly discredited at the Planning Commission hearing, which can be viewed online. The second opinion that is referenced in this "Finding" was based upon photographs that were sent to a consulting biologist, showing only a limited area (again in the dry season) and not depicting several willow trees growing along the tributary of the creek and around the border of the property. These willow trees are a prominent riparian feature in Stinson Beach, formerly known as Willow Camp. This biologist did not visit the site, another fact not mentioned in Section X. Another surveyor, also mentioned in this section, did note the presence of the willow trees and berry

[7] Approximately 18 people spoke and/or wrote one or more letters of concern related to this construction project and approximately 30 persons signed a petition opposing the Hjorth Coastal Permit Application.
[8] According to Section 1 Par.IX, only two of these permits were considered by the Coastal Commission neither of which raised the issue of new development on the 100-year floodplain.
[9] Mr. Edelstein's certificate as a biologist came from an online credentialing service called The Wildlife Society. This society offers three levels of certificates, for a fee: Certified Wildlife Biologist, Associate Wildlife Biologist and Professional Development Certificate. Mr. Edelstein, at the time of his report, was an Associate Wildlife Biologist which is defined as follows:
"An applicant for professional certification who has limited experience but who has completed the rigorous academic standards and is judged to be able to represent the profession as an ethical practitioner will be designated as an Associate Wildlife Biologist (AWB). After sufficient experience is gained, the AWB may apply for a more advanced level of certification." There is no evidence of the rigorous academic training offered by the Society.

plants, thus contradicting the original report's conclusion that there is no riparian vegetation within 50 feet of the vacant lot.

The treatment of the biologists' reports in Section X could charitably be described as the selective use of information. The reports fail to meet the most basic standards of objectivity or professionalism. And even after modifications to the plans, the project still encroached on the 100-foot buffer zone.

The biologist's report and statements in the hearing showed lack of understanding of the purpose of the study to examine broader impacts on the environment--not only for construction-- but generally. This is especially important given the proximity to the creek where other reputable studies have identified the presence of federally identified endangered species, both fish and amphibians. Furthermore, the property is clearly situated in a location where a considerable amount of surface water from the front of the property would run down to the culvert 32 feet away and directly into the creek. This new development project located in an environmentally sensitive floodplain lot (with a portion clearly in the required buffer zone) requires further objective study of the environmental impacts and cumulative effects of the project.

Section 1 Par X. B, C and D. FEMA's definition of floodplain maps should apply.

These sections attempt to revive a frivolous argument. The LCP is the equivalent of legislation and is governed by the same rules of statutory construction as statutes.[10] The LCP for Unit I prohibits new development in the floodplain" LUP Policy 30, p. 80; Interim Zoning Ordinance Section 22.56.01`30I(2)(1). The purpose of the Development Code is to implement the LUP; it cannot repeal it. Yet the Resolution does exactly that. Since FEMA took over the role of identifying and mapping the floodplains for the federal government they are the recognized authority. Paradoxically, the Resolution recognizes the relevance of the FEMA mapping in Section III (5).[11]

At the first BOS hearing on April 7, 2015, the Board authorized the CDA Director to obtain an opinion from the Coastal Commission regarding this issue. He did so by letter dated April 28, 2015. The Coastal Commission staff agreed with the appellants, as a

[10] "In interpreting statutes where the language is clear, courts must follow its plain meaning. However, if the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. In the end, we "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." Torres v. Parkhouse Tire Service (2001) 26 Cal.4th 995, 1003.

[11] Appellants submitted a statement from the Chief Planner of the Army Corps of Engineers in San Francisco that affirms that the Corps of Engineers has no plans to contradict the work of FEMA in regard to defining floodplain zones. The Corps itself recognizes the expertise of FEMA.

result of which the CDA notified residents in the affected areas of Stinson Beach that its previous interpretation of Section 22.56.130L(2)l was erroneous and that henceforth, new development would be prohibited. The inclusion of Section X par. (B), (C), and (D) in the Resolution obviously presents a substantial issue.

Section 1 Par. XI. Categorical Exemption from CEQA. This Finding states that the project is categorically exempt from CEQA "because it entails construction of a new residence in a residentially zoned district and would not result in potentially significant impacts to the environment." This Finding is false and flawed. See discussion of section 1 Par. X. A above. The project was approved without proper identification of the type and extent of sensitive resources on or near the property and associated buffer area; without proper evaluation of the potential impacts of the proposed project and without proper evaluation of mitigation measures. Both the water district and the County claimed to be unaware at the time of the exemption the subject lot was in the 100-foot creek set back. Thus, the county has not provided factual or legal support for its decision that the approved development would be consistent with the certified LCP or that it is categorically exempt from CEQA.

Furthermore, the Resolution ignores the issue that this development would result in increased flooding of neighboring properties and the community at large. This argument was given short shrift by Supervisor Kinsey who opined that photographs showed only standing water and that if the whole area is flooded what is the difference? Surface water is constantly moving, affected by a variety of factors. New construction channelizes storm flow and increases scour of surrounding properties. Structures block watercourses, development in floodplain interferes with natural processes. Hardened surfaces cause increased storm flow velocity. Sensitive habitats and endangered species are at risk from cumulative effects of run-off and added contaminants and toxicity related to new development. None of these effects is addressed in the Resolution.

Section XII. B. Septic System Standards. This finding that the Stinson Beach County Water District (SBCWD) found the residence to be appropriate for the approved wastewater system design ignores a number of problems brought to the attention of the county and water board by Appellants (see letters to SBCWD September 18, 2014 and June 17, 2015 outlining required setbacks and other concerns) and raises the issue of which county agency is ultimately responsible for ensuring compliance with set backs and relevant LCP requirements and at what point in the process? Appellants ask if approval to install a new septic system with underground tanks and a leach field on an undeveloped floodplain lot in is itself is a violation of the LCP prohibition against new development in the floodplain that the County is obligated to review and consider. The SBCWD uses a written disclaimer on its approvals that essentially states the ultimate authority to determine if a lot is buildable rests with the County. Still, the County

disregards deficiencies with the water district's approval, including the lack of accurate environmental elements and lack of conformity with environmental set back requirements, LCP, Unit 1 (1980).

XII. C. Grading and Excavation. The conclusion that the property "will involve little site disturbance" is in conflict with Section III par. 4 which requires the applicant to submit a plan showing and labeling the limit and disturbance and "[p]rovide the total area to be disturbed." The plans call for approximately 200 cubic yards of fill. With respect to grading, Marin County LCP policies require grading to be kept to a minimum and include specific standards for projects that involve grading and excavation of 150 cubic yards or more. LCP for Unit 1 Policies 24-26, p. 66. These standards specifically require that areas not suited to development because they are prone to flooding must remain in open space unless corrective work that can eliminate or substantiality reduce hazards are feasible. This has not been shown. Two hundred cubic yards of fill is not negligible and raises a substantial issue regarding conformance with the LCP.

Nor has it been shown that there is an adequate drainage plan to satisfy the requirement that drainage controls shall be incorporated so that run off rate from the project site does not exceed the storm water runoff from the area in its natural or undeveloped state for all intensities and duration of rainfall. LUP Policy 26, Par. 3 at p. 67. The topography alone and planned addition of fill suggests force of drainage to the surrounding road and lower properties will be increased.

XII. G. Stream and Wetland Resource Protection, Contrary to the Finding, this project is within a floodplain lot intruding into one or more buffer zones. The project's incursion into the buffer zone reflects its impact on the protected riparian area as reflected in policy group II Natural Resources Protection subsection A Marine and Water Resources Stream Protection 3. A riparian protected area and stream buffer area is established for all streams within Unit 1.

No construction, alteration of land forms or vegetation removal is permitted within the riparian protected area. Current plans call for components of the development including parking, plantings, and piping to encroach into the buffer zone. We have already addressed inadequacies of Daniel Edelstein's report that were based upon observations in the dry season and the failure of subsequent evaluations to cure those deficiencies.

The Finding states that the proposed new residence would be located within the same general area that has already been developed with other single-family residences, failing to distinguish nearly all were originally built prior to 1980 when the LCP was certified. The Finding continues, "Therefore, the project will not result in any additional impact upon stream or wetland resources and will comply with the LCP's riparian protection policies." This conclusion is entirely unsupported by competent study and

evaluation and is in fact contradicted by the applicant plans and drawings which show elements of the non-native landscape, parking, fencing, septic component lines and the roofline of the structure sitting within the 100-foot set back and a substantial portion of the structure and garage sitting inside the 50 foot zone. The fact that the property lies within 32 feet of a culvert and ditch that fills from the creek when the creek is high in the wet season triggers the 50-foot set back requirement. In regard to riparian set backs, the Willow trees along the tributary of the creek alone constitute riparian growth and the runoff from this property already runs into the area where the willows are growing, something obvious from the topography of the land and site drawings and photos submitted by Appellants (See area topo map and lot coverage illustrations).

Section XII Par.I. Wildlife Habitat: The Natural Resources Map for Unit 1 of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. While the community of Stinson Beach is known to be home to numerous special status species and wildlife habitats, it was determined that no sensitive wildlife habitat existed on the property. We have already addressed the shortcomings of the Edelstein assessment and particularly the fact that he viewed his assignment as determining the impact during the dry season construction and not the potentiality for environmental impacts during the rainy season when the endangered species would likely to be present.

Section XII par.O. Visual Resources. Included in this Finding is the assertion that the modified condition of approval allows construction of 1,100 sq. feet of living area which is less than the median home size of 1,200 square feet (of living area) for the Patios and Calles in Stinson Beach. This conclusion regarding the median is unsupported by evidence.

Section III: Conditions of Project Approval

The BOS imposed new conditions on the development. Plans incorporating these changes have yet to be submitted. The goal posts have been moved and we are obviously disadvantaged by not having the opportunity to review the revised plans. However, we are confident that portions of the development will continue to intrude into the buffer zone set back from the creek as well as in the set back zone from the riparian area which in the wet season is a tributary of Easkoot Creek. It appears that the septic, roofline, decking, non-native landscaping, parking areas and fencing will still be situated within the creek and culvert set backs. If plans incorporating the new conditions are submitted during the pendency of an appeal to the Coastal Commission, we reserve the right to submit comments at that time including approval actions by the water board.

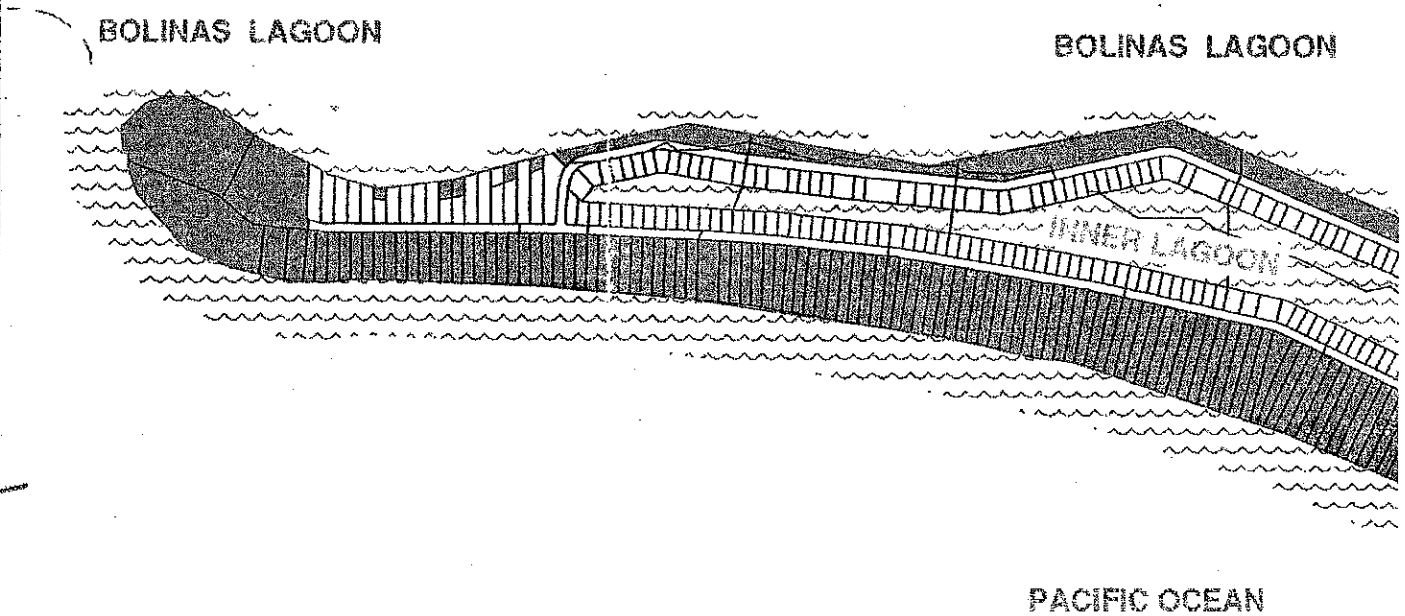
Finally, it must be noted that the County appeal process from beginning to end has been fraught with numerous administrative errors, late filings and omissions to the

disadvantage of Appellants as well as the public. For the DZA hearing, the environmental assessment of Daniel Edelstein that staff later said they relied upon was withheld from distribution or posting while e-mails correspondence from Appellant Hurley with the planner, marked as confidential, were inexplicably copied and distributed into the record with Appellants told any of their written e-mail submissions were required to be posted. Similarly, several community letters of support for the Appeal were not posted or distributed until after Appellants pointed out their absence. For the Planning Commission hearing, Commissioners were only sent three or four pages of what were approximately 80 pages of documents submitted timely by Appellants. The majority of pages were not publically posted or distributed to the Commission with the staff report. Only multiple complaints to all levels of staff including Director Brian Crawford resulted in the missing materials being located in a "wrong file" so they could be sent to the Commissioners and even then materials posted very late. (See letter of protest to Director Crawford). After the Planning Commission Hearing a county stamped document was discovered in Water District files proving the set-back distance argument brought forth by Appellants and denied by both the Water District and the DZA. Even at the most recent BOS hearing Appellants would not of known there was a letter filed by the attorney for the Applicant prior to the hearing but that he mentioned it during his testimony. Often it seemed staff were loading the deck in the direction of the Applicant in regard to distribution and/or withholding of submitted documents.

CONCLUSION

This appeal lies squarely within the jurisdiction of the California Coastal Commission and raises relevant and substantial issues of profound importance regarding the application of the California Coastal Act and of the Marin County LCP for Unit 1. We urge the Commission to make a finding that this appeal raises substantial issues, accept jurisdiction, and after due consideration, deny the Hjorth application for a coastal development permit.

SPECIAL FLOOD HAZARD AR
INUNDATION BY THE 1% ANN



Note:
The Special Flood Hazard Area is the area subject to flooding by the 1% Annual Chance Flood. The 1% Annual Flood (100-Year Flood), also known as the Base Flood, is the flood that has a 1% chance of being equaled or exceed in any given year. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE as shown in FEMA Flood maps.

Other flood areas consist of 0.2% Annual Chance Flood; areas of 1% Annual Chance Flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% Annual Chance Flood.

This map provides an intrepretative representation of the Special Flood Hazard area as shown on the FEMA Flood maps for the Stinson Beach community.

LEGEND:

SPI

WA

PLAN VIEW

Graphic Scale (in feet)

1000 0 1000 2000

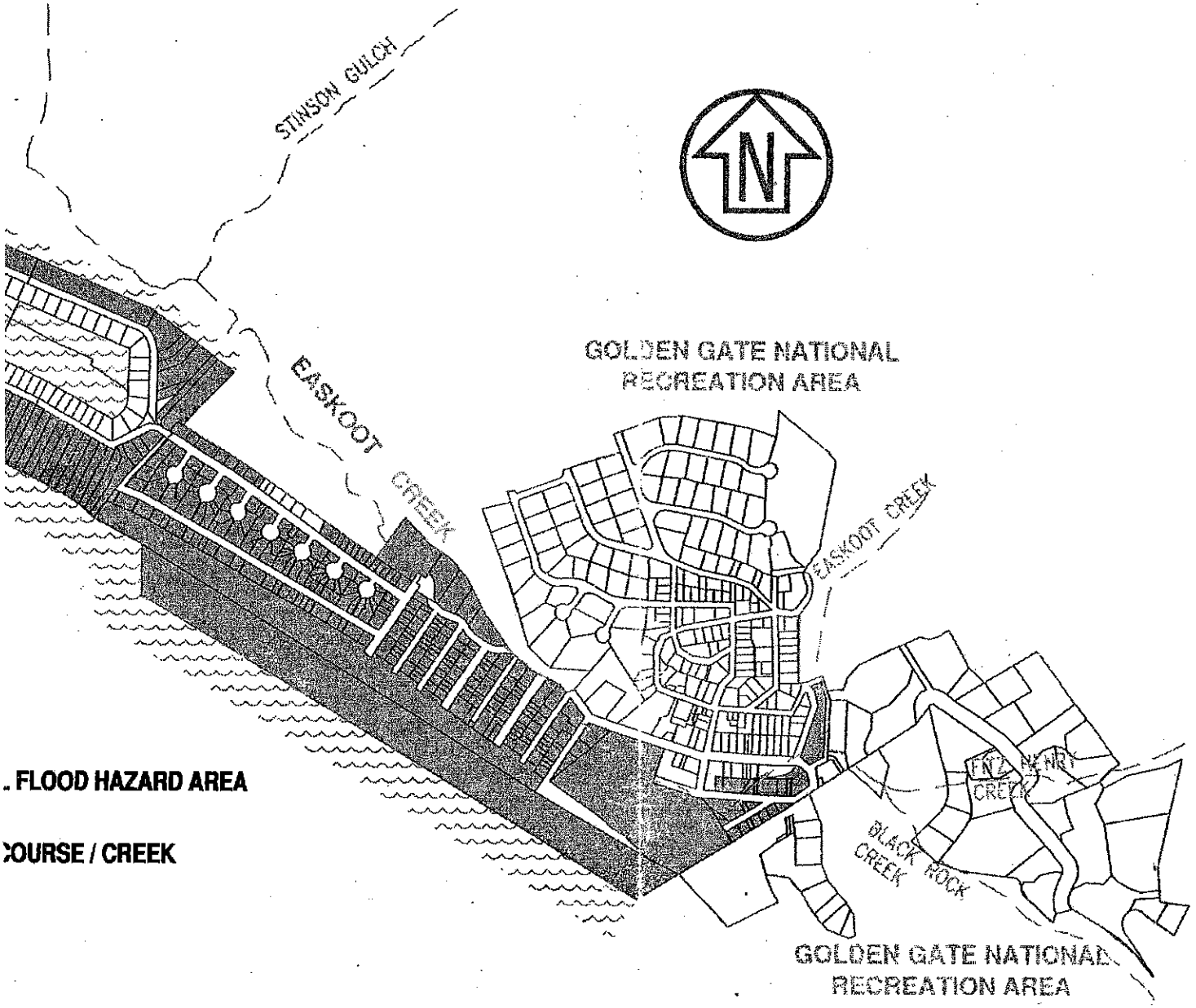
1 inch = 1000 f.

Stinso

A-2-MAR-15-0074
Exhibit 25
Page 26 of 54

3785 Shoreline Highw
Stinson Beach, CA 9

A SUBJECT TO
AL CHANCE FLOOD



. FLOOD HAZARD AREA

COURSE / CREEK

each County Water District

tel: 415.868.1333
fax: 415.868.9417

Date:	April 2011
Scale:	1 inch = 1000 ft.

STINSON BEACH COUNTY WATER DISTRICT

SPECIAL FLOOD HAZARD AREA

(100 YEAR FLOOD)

St nson Beach Marin County California

COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY

Brian C. Crawford
DIRECTOR

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY

Building and Safety
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Sustainability
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GIS
Federal Grants

www.marincounty.org/cda

November 17, 2015

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Hurley, Lowry, Et Al. Appeal of the Planning Commission's Approval of the Heidi Hjorth Coastal Permit (14-16)
4 Calle del Embarcadero, Stinson Beach
APN 195-132-03

RE: Errata Sheet to Staff Report Item No. 16, Hurley, Lowry, Et Al. Appeal

Since the writing of the Board letter, additional public correspondence has been received from appellants Kathleen Hurly, Erika Lowry, Et Al. The correspondence is attached.

ATTACHMENTS:

1. Appeal statement provided by Kathleen Hurley, Erika Lowry, Et Al.
2. Board of Supervisors Presentation, submitted by Kathleen Hurley, Erika Lowry Et Al.

Appeal from the Planning Commission's Decision of the Hjorth Application for a Coastal Permit, Application No.CP14-16

November 17, 2015

Honorable Board of Supervisors, Marin County:

Assistant Director Tom Lai informed owners of property within the floodplain of Easkoot Creek, Stinson Beach via a letter dated July 28, 2015 of the existing coastal development prohibitions within the 100-year floodplain. In describing the limitations and the guidance of Coastal Commission staff, Assistant Director Lai affirms "...it is the County's intention to closely follow the guidance to the extent the Coastal Commission has the ultimate oversight of permits in the County's coastal areas and retains authority to overturn county decisions."

Additionally, Tom Lai attended the Stinson Beach Village Association meeting and explained that the County had misinterpreted existing codes and ordinances that prohibited new development in the 100-year floodplain but now intend to comply based upon recent clarification and direction from the Coastal Commission.

Based upon these statements and the confirmation that the Hjorth undeveloped property lies fully in the described floodplain, we believe the application must be denied. We add additionally, that based upon a question from the Stinson Beach County District Water Board to Tom Lai at the Village Association, it seems to be the case that the septic system approved by the Board may itself be a violation of the land use provisions in the floodplain by the Stinson Beach Water District's findings for their 2012 variance.

The fundamental issue of the broad floodplain prohibition against new development is upheld in keeping with the guidance of the Coastal Commission. Additional concerns were raised in past meetings by individual supervisors and appellants about contradictions in the various submitted plans including unexplained extra space that was not counted as square footage,

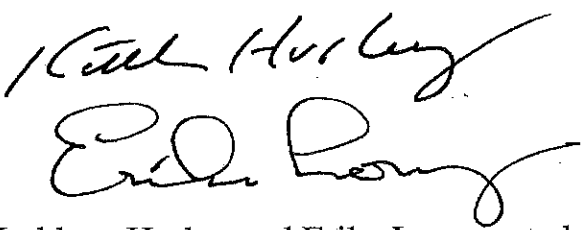
concerns about the lack of design review and concerns for fitting in with the character of the neighborhood.

There is no question of rising sea levels and a history of flooding already on the lot in question and the surrounding properties. The County has documented instances of flooding of this lot and surrounding properties both past and in the models for the future. The threat of flood is much more than 100 years for this property which neighbors have testified floods annually since at least 2005.

There is an issue raised by the applicant developer Hjorth that if the County fails to grant the application to build in the floodplain that she will seek judicial determination of taking as she won't be able to develop the lot in the way she hoped. We refer the Supervisors to the letter and legal case law citations of attorney Richard Kohn which show strong language and Supreme Case law that it is not a taking when a governmental body acts to follow laws designed to protect natural and neighborhood communities from ***nuisance*** and harm. That is the case, here. Neighbors and the surrounding community face increased risk of flooding adjoining roads and properties as well as incremental environmental degradation. Following the existing law serves to protect surrounding neighbors and roads and is the appropriate action in this instance.

We again ask that you deny the proposed new development in compliance with the protections afforded by the California Coastal Commission and the relevant Marin County land use codes.

Thank you for your consideration.



Kathleen Hurley and Erika Lowry, et al
Appellants

April 28, 2015

Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Request for Concurrence in Interpretation of LCP Policy

Dear Mr. Lester:

I am writing to request your assistance in interpreting an existing policy and related zoning standard governing floodplain development in Marin County's Local Coastal Program (LCP) Unit 1. This issue has been raised in the context of a proposal to construct a new residence on a vacant property located at 4 Calle del Embarcadero, Stinson Beach. (Hjorth Coastal Permit 14-16)

At issue is the language of LCP Unit 1 Policy 30 which states:

> *The properties presently zoned R-3 along Shoreline Highway shall be rezoned to R-2 in order to minimize flood hazards and the adverse impacts on Easkoot Creek which would result from such development (Easkoot Creek runs across the subject properties). Redesignation of the R-3 properties to R-2 will also assure development consistent with the existing character of the community. Development shall not be permitted within the 100-year floodplain of Easkoot Creek and shall otherwise conform with LCP Policies on septic systems and stream protection.*

The above policy is carried out in Section 22.56.130(L)(2) of the Zoning Ordinance which states:

> *Floodplain Development. Coastal project permit applications adjacent to streams which periodically flood shall include a site plan that identifies the one hundred-year floodplain (as described by the Army Corps of Engineers). Development of permanent structures and other significant improvements shall not be permitted within the limits of the one hundred-year floodplain.*

Although these provisions were replaced in the amended LCP (Land Use Program) currently under consideration by the Coastal Commission, until the amended LCP and the accompanying Implementation Program (Development Code) are certified, the standard of review for pending Coastal Permit applications is the existing LCP and Zoning Ordinance.

The existing policy and regulation use the term "floodplain." The current flood hazard maps prepared by FEMA as part of the National Flood Insurance Program identify the floodplain for purposes of administering the flood insurance program. For the reasons discussed below, we

do not believe that the current FEMA maps are synonymous with the floodplain maps referred to in the LCP. We have been unable to find floodplain maps from 1980 and 1981 when the LCP Unit I and Zoning Ordinance were certified and adopted, respectively. As the County's participation in the National Flood Insurance Program came after LCP certification (in 1982), the FEMA flood hazard maps currently used by the County would be of limited use since the special flood hazard zone shown on these maps covers most of Stinson Beach situated between the ocean and Highway One. After an exhaustive search of the County's LCP records and maps, we believe that the floodplain areas referenced in Policy 30 are intended to apply only to those parcels along Easkoot Creek that were rezoned from R3 to R2. This appears to be supported in the Coastal Commission staff report for the LCP Unit I (Hazards and New Development) dated January 18, 1980 (attached) where Chief Planner, Robert Lagle, stated:

> *In Stinson Beach, a few vacant parcels in the central area are designated for VCR, as noted above, while rezonings from R3 to R2 densities along Easkoot Creek will minimize flood hazards and associated adverse effects upon the creek...." (Page 4)*

The parcels affected by the rezoning include Assessor's Parcels 195-162-01, -02; 195-163-01 (currently portions of 195-163-200); 195-163-02; and 195-201-05, -06. The Hjorth parcel (APN 195-132-03) was not one of the R3 parcels that were rezoned to minimize flood hazards and the adverse impacts on Easkoot Creek, and it is currently located outside of what is presently identified as the floodway of Easkoot Creek. Please see attached maps.

Furthermore it would seem unlikely that the intent of LCP Unit I Policy 30 is to prohibit all development in the FEMA special flood hazard areas given that they cover almost all of Stinson Beach west of Highway One. Strict application of the LUP policy and zoning would have prevented approval of any new development in Stinson Beach after certification of the LCP. Had this been the intent, it would have manifested itself in a number of other areas in the LCP, including the section that discusses the buildout potential. However, we were unable to find any evidence of this being factored in that analysis. In fact, Table 4, Page 69 of LCP Unit I identified the number of additional homes possible along the Patios and Calles areas of Stinson Beach to be 39 and 30, respectively, and there was no discussion (in the Coastal Commission staff report on the Implementation Program) of the floodplain restriction under the section on density of development in Stinson Beach. (Please refer to pages 76 and 77 of the March 20, 1981 Coastal Commission staff report, attached.)

Please let me know whether you concur with County staff's interpretation of the above-referenced policy and regulation.

Sincerely,

Brian C. Crawford
Director

Attachments: (1) Coastal Commission Staff Report (1/18/80)
(2) Coastal Commission Staff Report (3/20/81)
(2) Assessor's Parcel Maps
(3) FEMA map showing special flood hazard zone and Easkoot Creek floodway

COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

NOTICE OF LAND USE REGULATIONS THAT COULD AFFECT YOUR PROPERTY

July 28, 2015

TO: Owners of Property within the Floodplain of Easkoot Creek, Stinson Beach

Our records indicate that you are the owner of a property in the floodplain of Easkoot Creek. I am writing to inform you of the applicability of an existing coastal development policy that could affect your ability to obtain permits for improvements to your property.

Development of properties in Stinson Beach is regulated by the Marin County Local Coastal Program and the Zoning Ordinance. The Local Coastal Program Unit 1, Policy IV-30 prohibits development that is located within the 100-year floodplain of Easkoot Creek. This restriction is intended to minimize exposure of life and property to flood hazards and adverse impacts on the creek. Marin County Code Section 22.56.130I(L)(2) further states that development of permanent structures and other significant improvements shall not be permitted within the limits of the 100-year floodplain.

Recently, during the County's review of a development application to construct a residence on a property located within the floodplain of Easkoot Creek, staff from the California Coastal Commission informed the County that properties located within flood zones AO and AE as mapped by the Federal Emergency Management Agency (FEMA) are subject to the afore-mentioned limitations. A map of FEMA's AO and AE zones can be reviewed at:

http://www.marincounty.org/depts/cd/divisions/planning/FEMAMapEaskootCreek

Although this determination differs from the County's past interpretation of the Local Coastal Program, it is the County's intention to closely follow the guidance to the extent the Coastal Commission has the ultimate oversight of permits in the County's coastal areas and retains authority to overturn county decisions.

While the restriction will apply to most new development, some types of construction (repair/maintenance and work necessary for health and safety) may be allowable. In addition, if your property is located partially in the FEMA flood zone, improvements located outside of the flood zone would not be subject to the restriction. If you have questions about the applicability of the development restriction to work that you are planning to undertake, please contact our Permit Center at (415) 473-6269. Our public information hours are Monday through Thursday, 8am to 4pm.

Sincerely,

Tom Lai
Assistant Director

3501 Civic Center Drive · Suite 308 · San Rafael, CA 94903-4157 · 415 473 6269 T · 415 473 7880 F · 415 473 2255 TTY · www.marincounty.org/plan

Stinson Beach Village Association Meeting Tom Lai:

Discussion of the County's program on development or significant remodels in the Easkoot Creek floodplain. Item V.a Tom Lai: Deputy Director

Informational Presentation as follow up to July 28, 2015 letter sent to property owners moderated by Mike Matthews

Tom Lai: I'm with community development agency and as most of you probably know we recently notified over 300 property owners of property within the floodplain of Easkoot Creek, that a long standing policy in our local coastal program was going to be interpreted differently than what we have for the last 25-30 years. I want to explain what led up to that. What does that mean to those of you who have homes and those who may have vacant lots and plans to improve them. I will talk a little bit about how this issue is related to the County's local coastal program and I will talk a bit about what the local coastal program is and the zoning regulations and then I thought I might open it up to questions. Everybody probably has questions for me about this topic.

Just a quick primer on laws and policies. This is a beautiful area and also an area subject to a lot of regulations. The local coastal program is the equivalent of what we call the general plan for the coastal areas of the county. The County also has its own general plan called the countywide plan that applies in some instances with community plans. We have a Local Coastal Program that was adopted in 1981. We are in the midst of updating that program. The program consists of policies that say what we would like to do how we want to treat development and what not. Separate from the Local Coastal Program are a set of zoning regulations for implementation of the program. What zoning do you have on your property? What is the maximum height limit for your building? How far do you need to set back structures from your property line? So the zoning regulations and the coastal program work together: one policies and one regulations.

So fast forward to earlier this year we were processing an application to build a new home on a vacant lot, it was very controversial, went on appeal to the planning commission and the Board of Supervisors. Before the BOS acted on the appeal, we received information from the coastal commission staff that we had been interpreting a long standing policy wrong. Why is

this important? This is important because our decisions in this particular area are not final. They can be appealed to the Coastal Commission which is a state hearing body. Our District Supervisor Steve Kinsey happens to be on the Commission. He is the chair currently of the Commission. So we don't want to set up a process whereby the county continues to approve development that would then be appealed to the commission and be subject to whatever the commission may decide to do with it because they are the ultimate decision makers on land use matters in this area.

What we decided then was to notify the property owners that there is this change in how we interpret this policy and to work with them on what we can do in the meantime on minor types of work they may want to do that may not trigger this policy and I will explain some situations where this policy may not apply.

More importantly, is the goal of the policy which is to say no new development in the floodplain of Easkoot Creek is permitted. The goal as you know is you live in a beautiful area but it is subject to flooding from the coast and the river and it is partly to protect people's lives and property. The idea is to try to minimize the numbers of new construction that can happen in the floodplain. That is a flat out policy that goes back to 1981.

We historically have not applied it as an outright prohibition on development. In fact, the county has approved 13 new homes and 15 major additions and remodels in the last years in the affected area. That is new development without interpreting and applying the policy in the way the Commission staff is applying it today. So you know we made the decision that we are going to change the way we administer the local coastal program. But all hope is not lost because we are also in the midst of updating our local coastal program replacing policies that may be outdated, unfair, unworkable, unclear with newer policies and factoring in new information that we have now in the past few years that we didn't have when the local coastal program was adopted. And going back to the program and the implementation for zoning regulations we've presented our program for local coastal program to the Commission and received conditional approval of the policies and the plan last year. And earlier this year the coastal commission conducted a hearing on the zoning regulations. We were not comfortable with the modifications that the Commission staff were making to the regulations on environmental hazards. For that reason we informed

the coastal commission that the County wants to step back, relook at the situation and submit a new amendment to the coastal commission. With regard to the issue about development in the floodplain, this is really bigger issue surrounding environmental hazards. In areas that are subject to fire, hazards, erosion, and what not. And we made the decision to hold off while submitting an amendment on our environmental hazards amendment until we have a chance to complete a study that is going on right now called C-Smart Study... Sea Level Rise study and we hope to wrap it up early next year so that we can learn from that study and incorporate and update the policies and regulations for consideration by the coastal commission. So our game plan is to proceed with another amendment to the environmental hazards section of the local coastal program along with the accompanying zoning regulations and present that to the commission next year after we finish the results of our C-Smart Sea Level Rise Study.

Mike: To summarize we have a community plan which is a set of zoning laws that govern development in SB and the County. But since the creation of the Coastal Commission we also have an overlay of regulation overseen by the commission. For development at SB you have to get both building permit and approvals from the County. You also have to have a permit from the Coastal Commission. Correct? (Generally Correct- Tom Lai)

Tom Lai: The Commission has delegated authority to the County to process and issue Coastal permits. However, our authority comes with the ability for the commission to appeal or any one to appeal county decisions to the full state commission. So in other words if they believe that we have acted inappropriately that we interpreted policies wrong there is the ability for the commission to pull up our decisions to the full state hearing body.

There is also the ability for neighbors to file appeals. So the county is obligated (Mike) to develop its own local coastal program to be incorporated into the entire coastal program for the coastal program, correct? Lai, yes.

Mike: So our own local coastal program.... Are you saying what happened is at the Coastal Commission level staff communicated back to you that you were interpreting part of the coastal program incorrectly?

Tom Lai: We interpreted this long standing policy erroneously. If we were continuing to interpret those policies incorrectly that would be grounds for the commission to appeal our decisions to the full hearing

body. Mike: So if you kept doing it they were going to intervene? What does that program say exactly?

Tom Lai: It's a good question because when this issue first came up we were trying to figure out what the authors meant. I know the language is very clear no new development in the floodplain of Easkoot Creek. What is the floodplain? What is development? We consulted with our colleagues on the commission staff about how this policy was structured. If you dive into the actual policy there are two parts to it. The first part talks about a number of sensitive multi-family R-3 properties that needed to be rezoned to duplex or R-2 properties. Then the second part goes on to say no new development in the floodplain. So we originally concluded that perhaps the no development in the floodplain pertained to those six multi-family parcels. There are about six parcels that were zoned multi-family at the time. We thought it was reasonable because those two ideas were embedded in one policy. The commission staff did not agree with our interpretation. Then we tried to look at the record. Staff reports stay silent on it. Looked for maps, this was pre-FEMA. Couldn't find an Easkoot Creek flood map. We have very little information so we asked the Coastal Commission what would inform on the intent of this policy. Nothing there. So what is the floodplain? So FEMA is the best information we have available today, Zones AE and AO are covered by this policy. Areas in the velocity zone or what is called the V zone are not. . Areas like seadrift do not. Areas that are subject to riverine flooding. Those with property on ocean side are not going to be subject to this policy but to FEMA standards.

Mike: Questions

Tom: Replace the floodplain language in the new draft design to ensure it is safe for 100 years and doesn't create hazards to other properties to lay out a path for development in the hazardous areas. Commission staff wanted to do more than what we are proposing and we were concerned that in some cases it is not fair and so we wanted to take a step back.

We are in gray area of updating the local coastal program. Some are clear some not. If you are proposing development the way we address it is to see if that qualifies for an exemption. Some work doesn't require a coastal permit.

Define the work to see if there is an exclusion. If not, then a coastal permit is required then these policies kick in. So there are minor things you can do such as repair and maintenance as long as you are not enlarging or expanding your structure and not be subject to this policy. Examples, fix dry rot, fix windows, raise the building to FEMA standards, these are all exempt.

Accessory structures do not trigger a coastal permit. What would trigger is if you want to expand your footprint or add on a new structure this would trigger a permit because they do not qualify for an exclusion. So I would try to steer people away from work that would trigger the permit. It would be very difficult to support that now and we don't want to send people on a primrose path when we can't support it.

Later, Larry Baskin of the SBCWD asks Tom Lai if the Water Board needs to check with the County before approving a new septic system on a lot in Stinson Beach. Tom Lai answers yes that he recommends that the Board not approve any major or new septic construction without first checking with the county. Lai stated he believes repairs or minor work will continue to be exempt while installation of a new system may not.

This is taken from recorded excerpts of the Stinson Beach Village Association Meeting in September 6, 2015. Bold areas are added for emphasis re: what was said about development on the floodplain of Easkoot Creek and the change in interpretation.

March 31, 2015. 12:13PM ARMY CORPS STATEMENT

Transcript of phone message to Kathleen Hurley from Tom Kendall, Chief of Planning, Army Corps of Engineers, San Francisco District. This call was a follow up to my E-mail request for clarification of the position of the Army Corps of Engineers as to whether they support or would contradict the current mapping of the 100-year Floodplain done by FEMA specific to Marin County Zone 5 including Stinson Beach.

Hi my name is Tom Kendall. I'm the Chief of Planning here for Corps of Engineers, San Francisco District. I've had some correspondence here from you forwarded to me. My boss is Lyn Gillespie (Chief of Engineering and Technical Services) and several other people having been digging into this, too, but it sounds like the bottom line here is this quote-
The 100-year floodplain area for Stinson Beach
within Zone 5 seems clear to you and not to be in dispute but you need to know if the Corps would contradict or support the maps.

And I think it is safe to say we would not contradict the maps. So if that works for you, you can quote me that the Corps does not plan to contradict maps published by FEMA. We have no active studies in the area and we are not being approached to help any one with revised mapping or anything of the sort.

I think it is pretty is safe to say that we would not contradict those maps. If you have any questions I am at 415-503-6822.

September 18, 2014

Stinson Beach County Water Department
Board of Directors
3785 Shoreline Highway
P. O. Box 245
Stinson Beach, CA 94970
Phone: (415) 868-1333
Fax: (415) 868-9417
sbcwd@**stinson-beach**-cwd.dst.ca.us

Re: Design Review Extension Application for unimproved property at Calle del Embarcadero APN 195-132-03 (Hjorth) Continuing Community Concerns

Dear Board Members:

We appreciate the opportunity to bring concerns and a petition from Stinson Beach residents and property owners to the recent Wastewater Committee meeting of September 10, 2014. We suggested the Water District could do a service for the community by seeking to have the developer verify the lot distance to Easkoot Creek prior to or in conjunction with any extension. The two Committee members made clear they would not reopen or amend past decisions of the Board pertaining to approvals for a septic system on this lot.

We are informed the stamped plans submitted by the lot developer include certification by Questa Engineering as to intended conformity with all setback codes and LCP requirements, including those having to do with the creek and nearby creek culvert drainage ditch.

We know distances can prove deceptive visually and there seems to be no official verification available at this time. Prudence demands setback requirements be verified before lot development proceeds under conventional county zoning. By measurements from Google maps to the blue line and by multiple reports of tape measurements by neighbors, we believe the distance to the creek, if professionally measured and stamped, will come in under 90 feet.

We direct particular attention to Title IV Onsite Wastewater Management Code adopted at the April 21, 2012 SBCWD Board of Director's Meeting, Ordinance 2012-01 (available on the SBCWD website). Chapter 4.15 Design: Standard Systems, Code 4.15.100 Site Criteria - Setbacks. Watercourses and Water bodies: 50 feet from Septic Tank, 100 feet from Drain Field. Drainage Ways: 50 Feet from Septic Tank to Drainage Way, (This has to do with the distance from the proposed septic tank for the lot and the existing drainage culvert at the intersection of Calle del Arroyo and Calle del

Embarcadero.) See Note 4: Setbacks from watercourses and water bodies shall be consistent with Local Coastal Program, Unit 1 (1980) Policies on Stream Protection, Policy 3, page 19, codified in Marin County Code, Title 22, section 22.56.130 G.3 (1983), and Marin County Countywide Plan (1994), Policies EQ-2.1, EQ-2.2, EQ-2.3, EQ-2.3a and Figure EQ-3. Finally, we are concerned about the parcel being located in a clearly identified 100-year flood zone as identified by FEMA and the County and the serious restrictions that entails.

It is concerning the lot developer has not yet been required to verify key setback measurements. Again, we very much appreciate the opportunity to be heard by the Committee and the time given to us to voice and explain neighborhood concerns. We support the work of the Board and water district staff to promote and protect the health and safety of our community. Thank you for your consideration.

Sincerely,

Kathleen Hurley and **Erika Lowry**

June 17, 2015

Stinson Beach County Water Department
Board of Directors
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Re: General Business Item #1, June 20, 2015: Consideration of a request for a one-year extension of a Design Approval Permit and Variance for 4 Calle del Embarcadero APN 195-132-03

Dear Board Members:

On June 17, 2015, we appeared before a SPECIAL one agenda meeting of the Wastewater Committee to express continued concerns with the proposed continuing extension with grandfathered provisions. We object to automatic extensions when the conditions of the original approvals are now conclusively documented by the applicant/developer Hjorth be based upon inaccurate environmental assumptions concerning required set backs.

Two Committee members heard us out and made clear to us as in the previous Committee meeting on this topic that they feel their hands are tied. They did not see why there should not be an automatic extension. They told us previously they would ***not reopen or amend the past decision*** of the full Board pertaining to approval for a septic system on this lot. They told us in this meeting they had no choice but to approve an extension.

Minutes of SBCWD Board of Director's Meeting December 21, 2013 General Business Public Hearing E. #2 Discussion and possible direction to staff re: Design Approval Permit for Vacant Lot on Calle del Embarcadero (APN-195-132-03) show the action of the full Board. The minutes show that after much discussion, the time-limited extension of the septic permit

was granted for one additional year conditioned upon the system remaining "**exactly**" as approved.

The water district engineer acknowledged in today's meeting there is a 50 foot set back required from the nearby drainage ditch and culvert along Calle del Arroyo which impacts construction options on this property. He stated when plans were approved previously they believed the set back requirement to have been only 25 feet. Additionally, two surveys, including a recent one by the developer conclusively shows the property and orginal elements of the septic design are proposed to lie within a required 100-foot top of creek set back. This had not been acknowledged previously by the SBCWB or County and requires plan adjustments to comply with the law.

Because proposed locations of septic elements including tanks, the tight lines, the proximity of various components of the plan to the septic system require significant alteration based upon a change in the house design as well as the septic system, there is no way possible for this project to reach anything close to the "exact" conformity required by the previous Board vote and actions. It would seem a new application with new plans based upon the updated and newly understood environmental setback considerations would be the prudent course.

The Committee Members are firm in saying the matter before them is only extends the language of the original permit and is not any endorsement of changes or new plans which would need to be submitted to the SBCWD engineer for approval of changes. One of the members said his impression was that the system was only being changed by "inches" when we know from submitted Developer plans that the lines must be moved fully to the other side of the property approximately 50 feet or more and tanks must move ten feet or more. Additionally, there appears insufficient space now for a back up septic field with recognition of correct set back requirements.

These questions may not be correctly directed to the Water Board but given we are not sure how else or to whom other than the Board to direct these septic system concerns we would like to go on record with presenting them. It seems practical to consider community challenges and legal considerations early rather than late, especially when a developer is submitting revised plans with septic elements that are incomplete and somewhat contradictory.

Prudence demands a sufficient review of the septic permit and set back requirements for the vacant lot on Calle del Embarcadero ***before*** any lot development proceeds.

It remains concerning the Developer has proceeded as far as she has when the terms of the permit are admitted in public record to be violated and with several environmental concerns and codes having to do with setbacks needing to be reconsidered and taken into account.

Last, we want to go on record with concerns for transparency and avoidance of favored treatment and appearance of conflict of interest. The Board of Supervisors placed this project on a continuance at the request of the developer stating they did not want to approve a project in this clearly difficult floodplain area under current ordinances that seem to forbid such new construction. They suggested the developer might return when the Local Coastal Plan was amended so that perhaps there would be a way to gain approval under the new language. It is unknown how long such amendments may take or if the developer will be able to gain approval.

We strongly support the work of the Board and water district staff to promote and protect the health and safety of our community. Thank you for your consideration.

Sincerely,

Kathleen Hurley and **Erika Lowry**

Dear Mr. Crawford,

On 9/4/14 Hurley , Lowry et al appealed the Hjorth property in Stinson Beach, Ca.
Today (10/20/14) I noticed that the critical bulk of our appeal package was not included in the County of Marin staff report online nor in the package we received in the mail.
We are upset that our appeal did not get distributed to the commissioner's in a timely manner and in keeping with the normal structure of this process.
We request that you respond by phone confirming when our appeal package was distributed? how much was distributed? and to whom? planning commisssion ? printed mailed material? and electronic posting ?

Sincerly,

Erika Lowry

cell phone number 415 306 2802
erikalowry@att.net

Mrs.Erika Lowry
PO Box 147
Stinson Beach CA 94970

Hearing Officer 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.

BEFORE THE MARIN COUNTY BOARD OF SUPERVISORS

Appeal from the Planning Commission's Decision of the Hjorth Application for a Coastal Permit, Application No.CP14-16
May 12, 2015

Is it lawful and desirable to add new construction in this part of the Easkoot Creek Floodplain? At the Hearing of April 7, 2015, Supervisors expressed recognition of important issues related to construction on the floodplain and flood prone areas of Marin County and in particular the area involved in this appeal. Some supervisors asked if more tools aren't needed to address such issues going forward. A fundamental question is whether or not the current certified law restricts new development in the 100-year floodplain of Easkoot Creek. Section 22.56.130 under finding L Geologic Hazardous Areas #2 states developments of structures and other significant improvements shall not be permitted within the 100-year flood plain. Does this restrict the proposed Hjorth construction?

The District Zoning Administrator initially said there is no to restriction, because the current law is outdated in that FEMA rather than Army Corps provides mapping. Planners later said perhaps the certified law intended to restrict building only in the floodway instead of the floodplain.

Supervisor Kinsey raised a concern that with so few undeveloped lots in the area it may make sense to defer permit approvals for any new construction until the new amended code is adopted and the matter is clarified. He also commented a moratorium on new development under the current LCP could possibly be interpreted to prevent raising of low cottages to the current FEMA requirement.

Appellants believe that existing development, including many cottages built from the 1930's and 40s, pre-dating creation of the Coastal Commission and Coastal Act, are exempt and grandfathered in to codes written after the fact. We also believe that health and safety provisions encourage needed repairs of existing structures as well as work to lift foundations to the new FEMA standards. With review, we believe repairs and safety improvements for already existing structures are distinguishable matters from permitting new construction on an undeveloped parcel. In any case the effect of FEMA's standards on existing non-conforming construction need not be finally adjudicated in this appeal, although the Board may wish to clarify its position on this issue.

When owners of existing floodplain homes apply to raise structures to FEMA standards, construction is typically limited in the current footprint. No new impermeable surfaces are added. For new development there is no existing footprint to conform to. All of the structure proposed creates new impermeable surface. In this case diagrams of the planned layout show lot coverage of over 72% with septic field, various underground

tanks, foundation and roof, decking, compressed driveway and other structural elements as shown.

Drainage Plan Needed: For this parcel there is an issue of uncontrolled drainage in an area that is known to regularly flood. Based upon research by the County this immediate area may be more in a ten-year floodplain as well existing in the broader 100-year plain. Serious flooding and road closures occur at the intersection nearest this vacant lot. Flood map models past and future, show the subject parcel and surrounding ones covered in water. This parcel and this intersection of Calle Arroyo and Calle del Embarcadero are not merely in the floodplain but it is known to be among the worst area of flood prone in Stinson Beach, the area that is the most worrisome flood area in the County. The location and known hazards warrant special mitigations. There is no drainage mitigation plan shown whatsoever and as it stands there is no way to think development of this lot will not lead to nuisance to the neighbors and detrimental impacts on the roadway and into the watershed. Appellants seek review of a ***completed*** plan, without vagueness, contradiction and missing components that addresses the very important issue of how drainage will be mitigated in this seriously flood prone area that floods annually. We believe a drainage study is imperative ***in advance of a permit.***

Environmental Study Needed: The planning department initially relied upon inaccurate and incomplete information from the developer when it secured the original categorical exemption from an initial CEQA study. We protest this exemption as it is well known to the county there are endangered and threatened species in the creek and easily possible to find in the tributary along the Calle Arroyo, less than 35 feet from the property line and within the riparian set back requirement. Appellants request this project be referred for an unbiased scientific initial environmental review. Tighter environmental standards are what are contemplated in the amended LUP based on greater understanding of sea rise and environmental impacts that weren't as well appreciated in the past. This is not the time to be more lax. The concept of cumulative impacts is well accepted and it is expected that the past, current and future impacts of development are be taken into account with projects that lie in the coastal zone. The categorical exemption made based upon incomplete information of the proximity to Easkoot creek and its seasonal tributary and habitat along Calle del Arroyo. Appellants ask that this development be properly examined in light of factual concerns.

Commissioner Wade Holland commented at the meeting of Oct 27, that perhaps if it is shown that the tributary of the creek with its existing willow trees is riparian the construction as shown won't be able to be built at all. This is a possible outcome and the problem is that things got so far without any proper environmental study. The dictionary definition of the term "riparian" would seem conclusive on this point.

Appellants seek affirmation of the current law in regard to the prohibition of floodplain construction. If the Supervisors deem the lot one to be built upon then Appellants seek at minimum an unbiased, scientific initial environmental review consistent with the delicate environmental location prior to proceeding.

Does this Project Satisfy Scope and Character Concerns? With the absence of design review, much was said in the last as well as in prior proceedings about the failure of the project design to fit the character and scale of the surrounding neighborhood. The proposal of a full build out with the mass of house so close to neighbors is of concern to many. Appellants agree it makes good sense to consider those elements in any project set within the Calles of Stinson Beach.

We appreciate the information on average home size presented by the Planning staff but take issue with the analysis of April 7, 2015 which calculated averages based upon inclusion of all the larger structures from the Patios. This is an apples to oranges comparison as the Patios have different zoning, sit on larger lots, and are not generally representative of what is typical in size for this oldest section of Stinson Beach Calles. Appellants presented in the past and present again evidence of what is more typical of this older part of the Calles that has many modest cottages from 1933 to 1940 and one built in 1922. Neighboring properties directly in sight of this project are not big houses generally as proposed here. It is the newest construction projects, most recently allowed, that are so large in the Calles and Patios. Appellants do not believe using the exceptions as a basis to justify more exceptions is wise for public policy. Saying we already let others do it so let's keep letting others do it is not consistent with protecting and enhancing the community and environment.

The factual record is incomplete to support an approval of a coastal permit, including the lack of initial environmental review for this new development that is already recognized by other agencies of the county as well as in past planning reports to rest in an environmentally sensitive floodplain prone to flooding. Based upon known topography, runoff drains though this property to neighboring lots, public infrastructure and into the nearby watershed that is home to numerous federally recognized endangered and threatened species; yet, no drainage plan or mitigations have been presented. The drawings presented contain contradictions and missing elements and questions about conversion of unconditioned pace to habitable that Appellants do not believe should be left unresolved or ignored, especially in the face of so many concerns about scale and character and impacts upon the neighbors and community.

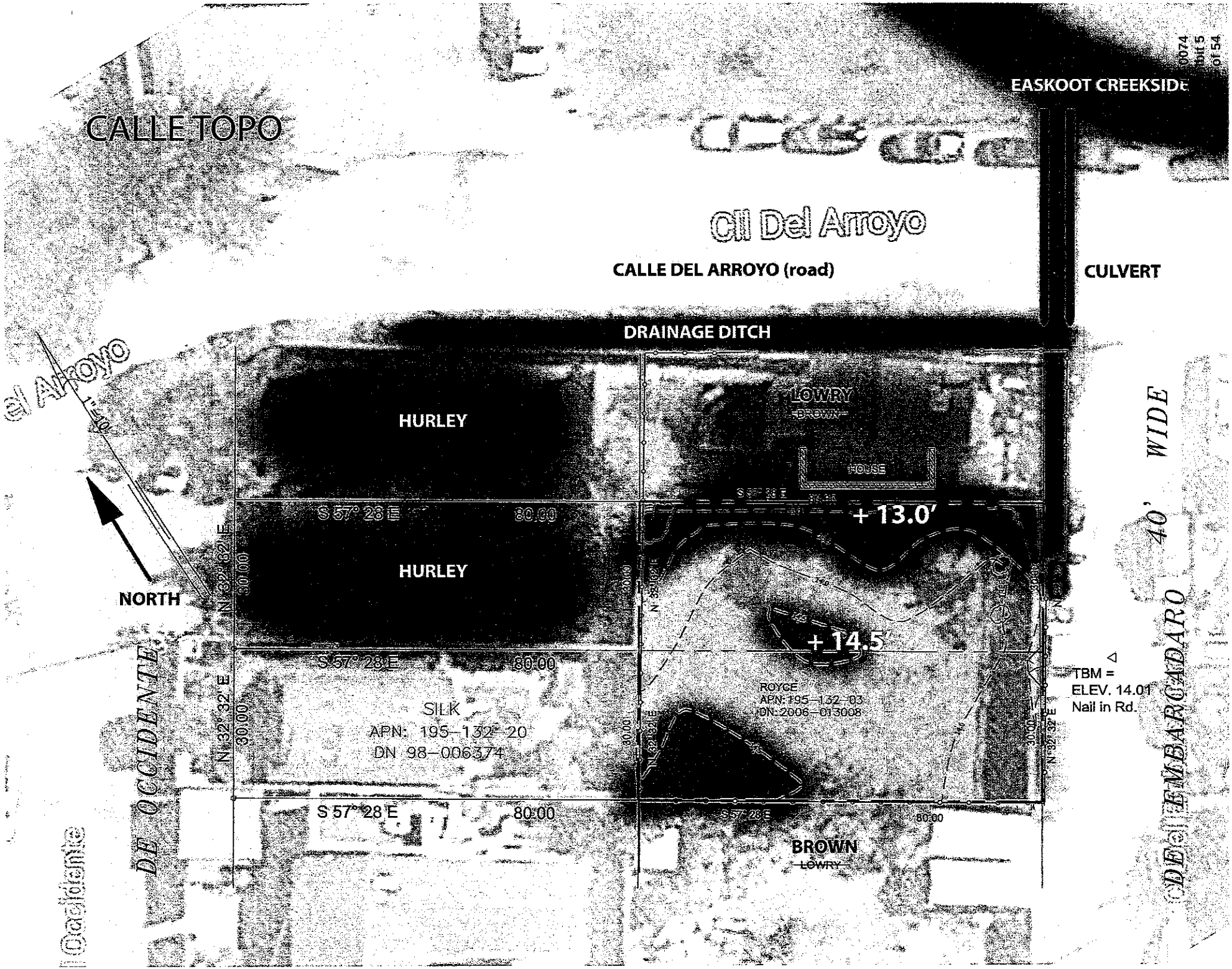
Appellants urge the members of the Board of Supervisors to carefully review the materials and concerns submitted and to use the tools available to reasonably enforce environmental and other protections afforded by the California Coastal Plan.

Kathleeen Hurley and Erika Lowry on behalf of Appellants

Attachments:

List of sq. footage of surrounding cottages/structures from Zillow records May 2015

Letter to Nancy Cave, CA Coastal Commission seeking to preserve right of appeal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ROYCE
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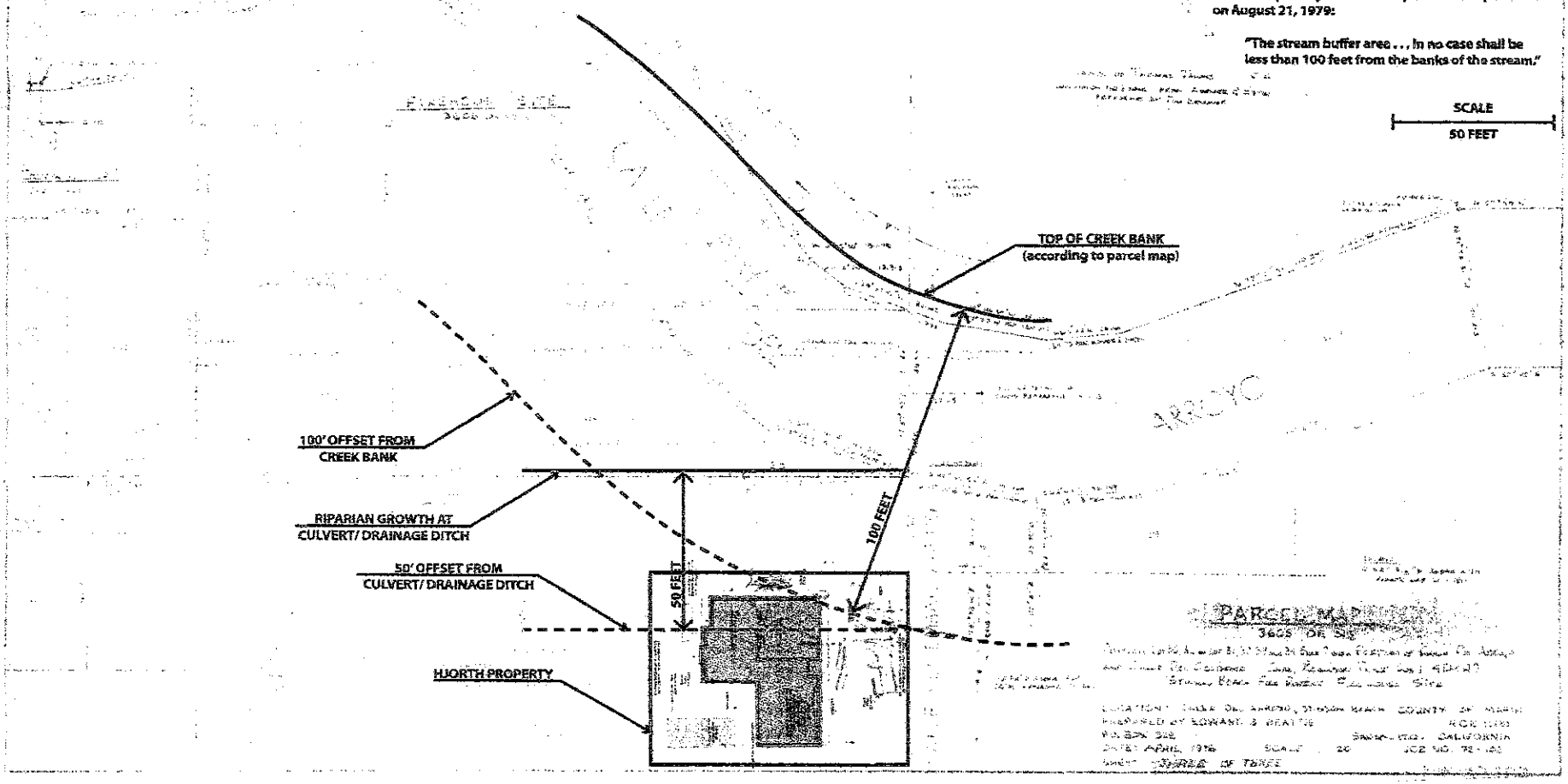
DN: 2006-013008
TBM =
ELEV. 14.01
Nail in Rd.
DE OCCIDENTE
DE EMBARCADARO
40' WIDE
BROWN
LOWRY

AMENDED TO SHOW UPDATED PLAN
MARCH 2015

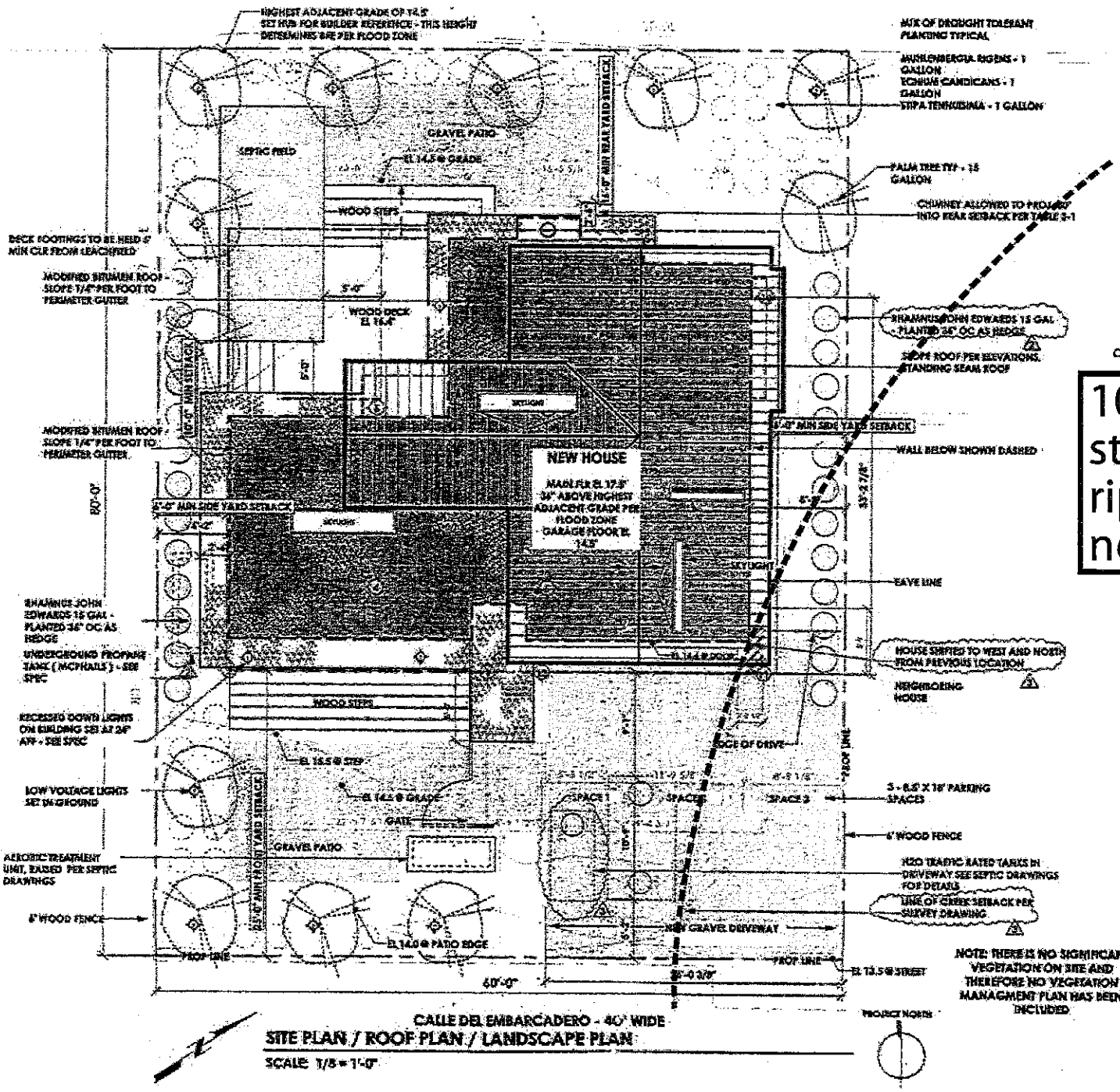
This parcel map of Calle Del Arroyo, Stinson Beach, County of Marin, CA is the third sheet of the three-sheet survey prepared by California Registered Professional Engineer (Civil) Edward B. Beattie in April 1978.

According to the Marin County Local Coastal Program Unit 1 adopted by Marin County Board of Supervisors on August 21, 1979:

"The stream buffer area . . . In no case shall be less than 100 feet from the banks of the stream."



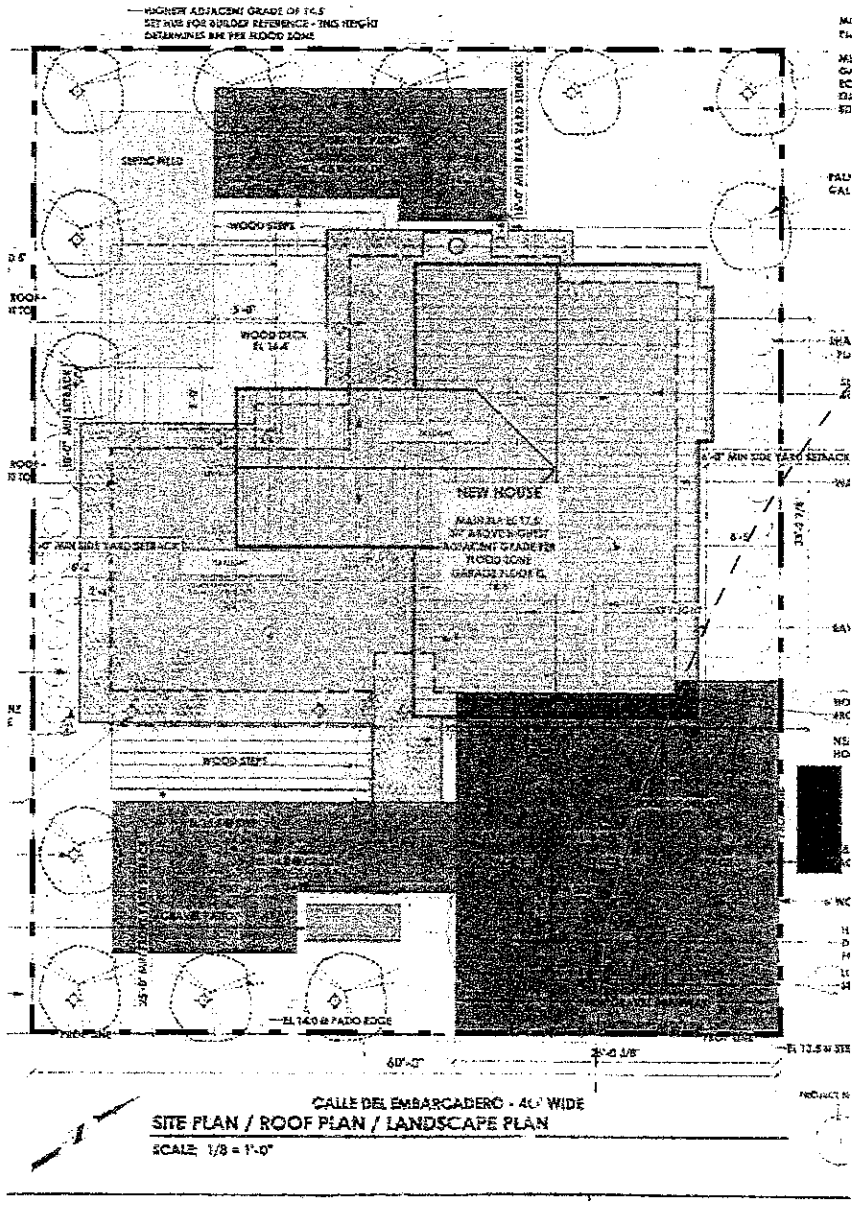
17 Pages 78-102



PROJECT:
Calle De Embarcadero
Stinson Beach, Ca.

OWNER:
Heidi Herth
Fabrizio Natale
30 Juanita Ave.
Mill Valley, Ca. 94941

PHONE:
Heidi Cell: 415.209.9236



SITE PLAN / ROOF PLAN / LANDSCAPE PLAN

SCALE: 1/8 = 1'-0"

HJORTH PROPERTY
PROPOSED DEVELOPMENT

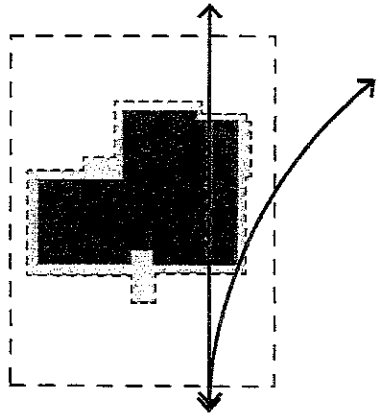
COVERAGE / NON-PERMEABLE ELEMENTS LIST:

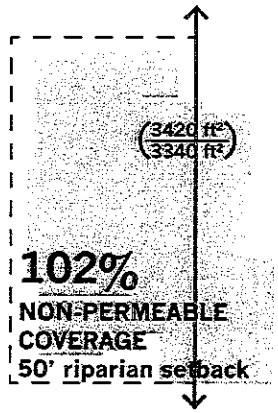
HOUSE + GARAGE + OVERHANGS:	1700 ft²
SEPTIC TANK:	188 ft²
AEROBIC TANK:	22 ft²
PROPANE TANK (not drawn):	32 ft²
DRIVEWAY:	727 ft²
GRAVEL PATIOS:	503 ft²
WOOD DECKS/STEPS:	474 ft²
SITE AREA:	4800 ft²
100' CREEK SETBACK AREA:	430 ft² (4370 ft²)
50' RIPARIAN SETBACK AREA:	1460 ft² (3340 ft²)

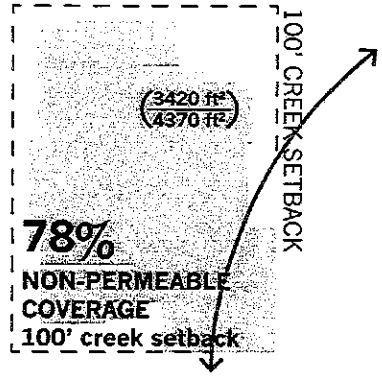
HJORTH LOT AREA COVERAGE MODELS

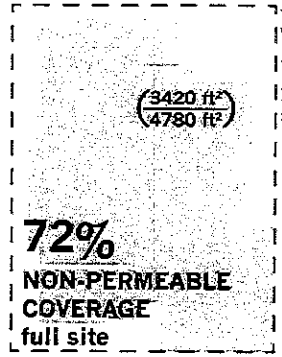
LIVING + GARAGE
ROOF OVERHANG
NON-PERMEABLE

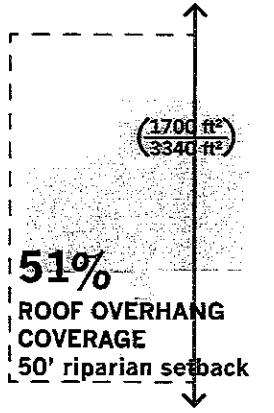
+ full site
+ 100' creek setback
+ 50' riparian setback

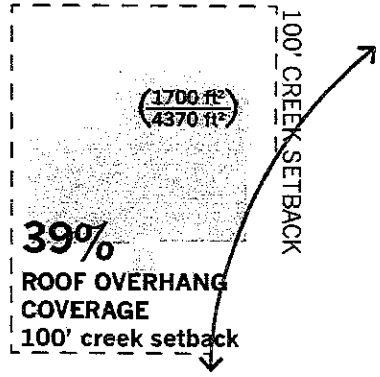


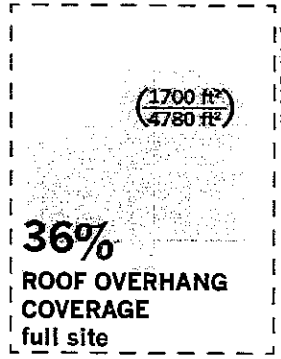


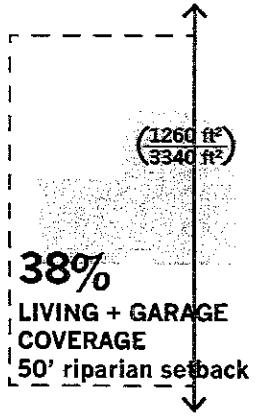


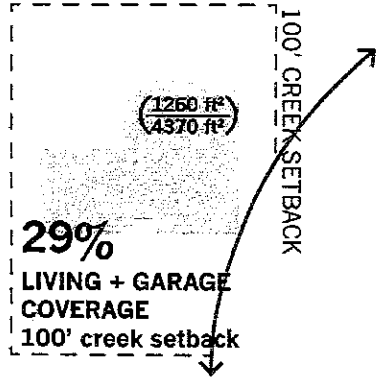


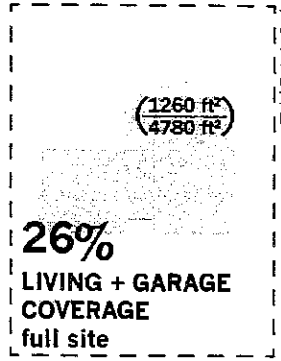












Standing water from oversaturated soil and runoff from the vacant Hjorth lot from south to north.

Runoff from the Hjorth lot sometimes bursts through the raised beds in torrents.

In 2005 24 homes flooded along the creek including those on an adjoining subject lot. The subject lot was underwater as was the Calle itself on the creek side.

Community Petition

re: Development of Vacant Lot on Calle del Embarcadero, Stinson Beach, CA.

I, the undersigned, am ***opposed to granting a Coastal Permit*** (14-0051) for development of the vacant lot on Calle del Embarcadero as proposed by Developer Hjorth. Proposed development is in an environmentally sensitive floodplain within 100 feet of Easkoot Creek. The Hjorth application proposes construction that will result in more than 60% hardened, impermeable surfaces over what now is open ground and vegetation. Proposed construction over the majority of the lot will increase runoff to the street and neighboring properties and place environmental strain on the surrounding neighborhood. The submitted proposal fails to recognize or provide mitigations to protect the neighborhood and community from damage and nuisance.

I support the Hurley, Lowry et al appeal of the HjorthCoastal Permit and agree that this coastal permit should be denied. If the permit is not denied we support having the project be referred for more proper evaluation and environmental review based upon the California Coastal Act, the local coastal plan, and relevant environmental considerations. Thank you.

I support the Hurley, Lowry et al PC Appeal (14-0331) / BOS Appeal (15-0045):

Name, Signature, Marin County address (please use two lines)

Debi Damas Debi Damas
21 calle del embarcadero # 6 Stinson Beach CA 94970
Wendy Clark Wendy Clark
21 Calle Del Embarcadero # 2 Stinson Bch, Ca. 94970
Robin Ahlgren ROBIN AHLGREN
21 Calle Del Embarcadero #3 STINSON BEACH 94970
Tina Weaver Tina Weaver
21 CALLE DEL EMBARCADERO # 5 STINSON Beach 94970
Becki Wills
2 Calle Del EMBARCADERO Stinson Beach 94970
Erika Brown
2 Calle del Embarcadero Stinson Beach Ca. 94970
17 CALLE DEL EMBARCADERO STINSON BEACH
17 CALLE DEL EMBARCADERO STINSON BEACH
26 Calle del Embarcadero Stinson Beach
24 calle del embarcadero stinson

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Name, Signature, Marin County address (please use two lines)

Donna Faniello - [signature]
3 Belvedere Ave, Belvedere CA 94920
Laura Lee Miller [signature]
[illegible] 12 Calle del Arroyo, Stinson Beach CA 94970
Scott Kline [signature] 1 calle del embarcadero Stinson Beach CA 94970
DAVID NAFTALIN 9 CALLE DEL EMBARCADERO "
[illegible] 10 " " RIBERA
[signature] 17 Calle del Resaca Stinson Beach CA 94970
[signature] 22 Calle del Resaca Stinson Beach CA 94970
[signature] 16 Calle del Resaca Stinson Beach, CA 94970
[signature] 3755 HWY 1 Apt 2 SB CA 94970
[signature] 3755 Hwy 1 Apt 5 SB CA 94970
Luganda Brisbes 3755 Hwy 1 Apt 4 S.B CA 94970
[signature] " 3755 Hwy 1 apt 4 S.B. Ca 94970
M Greenwood 21 Calle del Arroyo, SB, CA 94970
[signature] 30 Calle del Embarcadero

Community Petition

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I support the Hurley, Lowry et al PC Appeal (14-0331) / BOS Appeal (15-0045):

Name, Signature, Marin County address (please use two lines)

Barbara Williams, 6 Calle del Embarcadero, Stinson Beach, CA
Angela Ruben, 32 " " " " "
Scott Tye PO BOX 885 Stinson BEACH
DON ANDERSEN PO 364 SB 6 CALLE DEL PIÑOS
JAY LITTLE 285 BELVEDERE SB
CLINT GRAVES " BOX 1084 ST BCH CA 94970

COUNTY OF MARIN

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

NOTICE OF LAND USE REGULATIONS THAT COULD AFFECT YOUR PROPERTY

July 28, 2015

TO: Owners of Property within the Floodplain of Easkoot Creek, Stinson Beach

Our records indicate that you are the owner of a property in the floodplain of Easkoot Creek. I am writing to inform you of the applicability of an existing coastal development policy that could affect your ability to obtain permits for improvements to your property.

Development of properties in Stinson Beach is regulated by the Marin County Local Coastal Program and the Zoning Ordinance. The Local Coastal Program Unit 1, Policy IV-30 prohibits development that is located within the 100-year floodplain of Easkoot Creek. This restriction is intended to minimize exposure of life and property to flood hazards and adverse impacts on the creek. Marin County Code Section 22.56.130I(L)(2) further states that development of permanent structures and other significant improvements shall not be permitted within the limits of the 100-year floodplain.

Recently, during the County's review of a development application to construct a residence on a property located within the floodplain of Easkoot Creek, staff from the California Coastal Commission informed the County that properties located within flood zones AO and AE as mapped by the Federal Emergency Management Agency (FEMA) are subject to the afore-mentioned limitations. A map of FEMA's AO and AE zones can be reviewed at:

http://www.marincounty.org/depts/cd/divisions/planning/FEMAMapEaskootCreek

Although this determination differs from the County's past interpretation of the Local Coastal Program, it is the County's intention to closely follow the guidance to the extent the Coastal Commission has the ultimate oversight of permits in the County's coastal areas and retains authority to overturn county decisions.

While the restriction will apply to most new development, some types of construction (repair/maintenance and work necessary for health and safety) may be allowable. In addition, if your property is located partially in the FEMA flood zone, improvements located outside of the flood zone would not be subject to the restriction. If you have questions about the applicability of the development restriction to work that you are planning to undertake, please contact our Permit Center at (415) 473-6269. Our public information hours are Monday through Thursday, 8am to 4pm.

Sincerely,

Tom Lai
Assistant Director

3501 Civic Center Drive · Suite 308 · San Rafael, CA 94903-4157 · 415 473 6269 T · 415 473 7880 F · 415 473 2255 TTY · www.marincounty.org/plan

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***

Agenda Item	Applicant	Description	Page
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 Appelant, Kathleen Hurley	8-12
		Comments from an audio record, Jeremy Tejirian	13-14
		Correspondence, Surfrider Foundation (Prom & Tye)	15-19

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)l 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 22.06.010l 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 22.06.010l 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.[1]

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.

[1] 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.4th 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.[2] 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.

[2] 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 22.06.010l and 22.86.010l, 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 20a

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 Tejirian 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 than150 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.

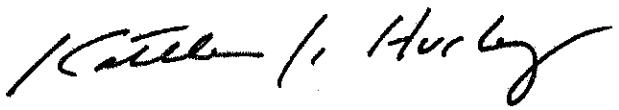
Applicants seek de novo review of the facts concerning violations of the LCP, which include Applicant's incomplete plans that show encroachment on environmental setbacks, failure to provide drainage plans for protecting lower lying properties from

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,



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

Single Family Homes			*BDR*	*Bath*	
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 Puenta 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	
LOTS			*approx sq ft*		
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
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**

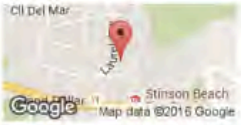
Year Built: **1914**

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

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."[1]

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.[2]

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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[1] *See* http://www.coastal.ca.gov/cdp/appeals-faq.pdf, at p. 3.

[2] 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.[3]

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.[4]

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.4th 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. 4th 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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[3] What's more, the applicant has not even sought a variance, which would be required pursuant to MCMC § 22.86.020I.

[4] *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.[5] 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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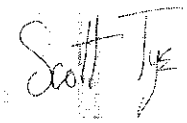
[5] For example, a search on Redfin.com shows other undeveloped lots for sale in Stinson Beach for approximately $1,150,000 (as of 2/5/2016).

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