



**STAFF REPORT TO THE MARIN COUNTY
PLANNING COMMISSION
Brian Johnson Trust Coastal Permit**

Recommendation: Partially deny and partially approve with conditions
Hearing Date: November 22, 2021

Application No(s):	P3049	Owner(s):	Brian Johnson Trust
Agenda Item:	4	Assessor's Parcel No(s):	195-162- 49
Last Date for Action:	December 2, 2021	Property Address:	21 Calle Del Onda, Stinson Beach
		Project Planner:	Sabrina Cardoza
		Signature:	<i>Sabrina Cardoza</i>
Countywide Plan Designation:		C-MF2 (Coastal, Multi-family, 1-4 units/acre)	
Community Plan Area:		Stinson Beach Community Plan	
Zoning District:		C-R2 (Coastal, Residential, Single-family, 7,500 square-foot minimum lot size)	
Environmental Determination:		Negative Declaration State Clearinghouse #2019129048	

PROJECT SUMMARY

The applicant, Brian Johnson, on behalf of the owners, the Brian Johnson Trust, has submitted a Coastal Permit application to construct a new two-story, 1,488 square-foot single-family residence and a 288 square-foot detached garage on a vacant lot in Stinson Beach. The 1,488 square feet of proposed development would result in a floor area ratio of 9.8 percent on the 15,200 square-foot lot. The proposed building would reach a maximum height 25 feet above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 53 feet from the northeastern side property line; 90 feet from the southwestern side property line; 25 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new driveway, decks, and landscaping improvements.

The property is located at 21 Calle Del Onda, Stinson Beach and is further identified as Assessor's Parcel 195-162-49.

PROJECT SETTING

Characteristics of the site and surrounding area are summarized below:

Total Lot Area:	11,200 square feet
Adjacent Land Uses:	Single-family residences, Marin County Upton Beach and the Pacific Ocean to the south
Topography and Slope:	Relatively flat, with an average slope of 7.13 percent
Existing Vegetation:	Ice plant mats and sandy beach
Environmental Hazards:	The northern portion of the site is located within the AO FEMA Flood zone (2017) and the southern portion of the site is located with a VE FEMA flood hazard zone (2017).

The site is a beachfront property adjacent to Marin County Upton beach located within the community of Stinson Beach. The property is currently vacant with the remains of a single-family residence previously destroyed by fire and is accessed by Calle Del Onda. The project site is surrounded on three sides by properties varying in size and developed primarily with single-family residences.

BACKGROUND

On February 16, 2021, the Planning Division received a Coastal Permit application for the subject property. The project was transmitted to the Department of Public Works (DPW). An Interagency Referral, dated February 24, 2021, was prepared and posted on the project website, along with the project materials, with a request for comments from public agencies with regulatory authority over the project to be submitted by March 12, 2021. Staff received written responses from DPW and the California Coastal Commission. The application was deemed incomplete on March 18, 2021, including information requested by the Planning Division and the California Coastal Commission.

The applicant submitted revised materials on June 8, 2021. A second Interagency Referral, dated June 10, 2021, was prepared and posted on the project website along with revised project materials, with a request for comments from public agencies with regulatory authority over the project to be submitted by June 24, 2021.

The application was deemed complete on July 7, 2021, and a Notice and Referral of Planning Application, dated July 12, 2021, was prepared and posted on the project website. Staff received a written response from the California Coastal Commission on August 5, 2021, which is attached to the staff report.

On July 29, 2021, the applicant's project consultant, Steve Kinsey of Civic Unit, submitted a letter to the Planning Division which provided the applicant's voluntary consent to extend the final date of action by 90 days in order for staff to conduct a takings analysis pursuant to the Marin County Local Coastal Program, which took effect on August 12, 2021. The last date for action has been extended to December 2, 2021.

The applicant provided the following reports as part of the application materials:

- Preliminary Geotechnical Feasibility Study prepared by Murray Engineers Inc, dated January 14, 2021, which concluded that the project is feasible from a geotechnical standpoint.

- Coastal Engineering Analysis prepared by Noble Consultants Inc, dated July 12, 2021, which provided an analysis of sea level rise and coastal flood hazards which concluded that the septic system may not be subjected to coastal flooding under current conditions but may be subjected to coastal flooding in 50 years without experiencing wave action or wave force.
- Supplemental letter prepared by Noble Consultants, dated May 13, 2021, which further clarified flood risks including impacts during high tides and sea level rise.
- Draft Initial Study/Proposed Mitigated Negative Declaration prepared by WRA Environmental Consultants for the Stinson Beach County Water District, dated December 2019, which included the Biological Site Assessment prepared by WRA Environmental Consultants. The document included an analysis prepared per State CEQA Guidelines and concluded that all impacts to the environment identified as potentially significant would be mitigated to a less than significant level.
- Supplemental letter prepared by WRA Environmental Consultants, dated October 1, 2021, which further clarified the natural communities on the site and concluded that the site does not provide habitat for rare or endangered species.
- Letters from the project consultant prepared by Civic Unit dated February 12, 2020; June 3, 2021, and October 4, 2021, which provides summary details related to the project including property ownership history and information.

An Initial Study was prepared for the project pursuant to the requirements of the California Environmental Quality Act (CEQA) by the Stinson Beach County Water District (SBCWD) acting as Lead Agency and qualified for a Mitigated Negative Declaration (see attachment 12 of the staff report). The Mitigated Negative Declaration was filed with the Marin County Recorder's Office on July 21, 2021, after satisfying all CEQA requirements. The project was found to have no significant effects on the environment, after mitigation. The mitigations are not required as conditions of approval because the SBCWD, as the lead agency, has adopted the Mitigated Negative Declaration and a Mitigation Monitoring Program.

On March 3, 2021, a site visit was conducted, and a notice was posted on the project site identifying the applicant and describing the project and its location. The story poles were installed on April 2, 2021. The Community Development Agency provided a mailed public notice dated October 28, 2021 identifying the applicant, describing the project and its location of a hearing date before the Planning Commission of November 22, 2021 in accordance with California Government Code requirements. This notice had been mailed to all property owners within 600 feet of the subject property.

KEY ISSUES

Public comments received for the project prior to the publishing of the staff report include letters from the California Coastal Commission, legal counsel for the property owner at 17 Calle del Onda, Stinson Beach and legal counsel for the property owner at 24 Calle del Sierra, Stinson Beach and an email from a property owner at 6 Calle Del Onda, Stinson Beach. The comments that have been raised are summarized in the following key issues: (1) flooding risk from Easkoot Creek and sea level rise; (2) geotechnical risks including liquefaction and erosion; and (3) impacts to Environmentally Sensitive Habitat Areas (ESHAs).

The application was deemed complete on July 7, 2021. Shortly thereafter, on July 13, 2021, the Marin County Board of Supervisor's (BOS) voted to activate the certified Local Coastal Program (LCP) Amendments, which were approved by the BOS and certified by the Coastal Commission

with the exception of chapters related to environmental hazards. On August 12, 2021, the certified LCP amendments were activated including policies under the Land Use Plan (LUP) and the Implementation Plan (IP), with the exceptions of chapters related to environmental hazards. As a result, the environmental hazards sections from the original versions of the LCP, certified by the Coastal Commission in 1980 (Unit I) and in 1981 (Unit II) and the Marin County Interim Code Sections 22.56.130I.H, 22.56.130I.K, and 22.56.130I.L apply to this development.

As such, the attached recommended resolution addresses and includes further discussions of issues related to flood and geotechnical risks under Marin County Interim Code Sections 22.56.130I.K and 22.56.130I.L and issues related to ESHAs under the applicable policies contained in the Biological Resources section of the Marin County Land Use Plan and applicable standards contained in Marin County Implementation Plan Section 22.64.050, as well as Marin County Interim Code Section 22.56.130I.H.

Further, the IP section 22.70.180 (Potential Takings Evaluation) states:

“If the application of the policies, standards or provisions of the Local Coastal Program to proposed development would potentially constitute a taking of private property, then a development that is not consistent with the LCP may be allowed on the property to avoid a taking, provided such development is as consistent as possible with all applicable policies and is the minimum amount of development necessary to avoid a taking as determined through a takings evaluation, including an evaluation of the materials required to be provided by the applicant [...]”

As further discussed in the attached recommended resolution, the proposed septic system and detached garage are inconsistent with Marin County Interim Code Section 22.56.130I.K due to their siting within the AO FEMA flood zone, which has been identified as being located within the floodplain of Easkoot Creek. As such, the recommended resolution includes a denial of the detached garage and a potential takings evaluation has been prepared pursuant to the supplemental findings for Coastal Permit approval under the IP section 22.70.180.C in the attached recommended resolution.

RECOMMENDATION

Staff recommends the Planning Commission review the administrative record, conduct a public hearing, and partially deny and partially approve the Brian Johnson Coastal Permit, based on the findings and subject to the conditions contained in the attached resolution.

Attachments:

1. Recommended resolution
2. Planning Application Review, Department of Public Works, dated March 16, 2021
3. Stinson Beach County Water District Variance, Resolution WW.2020-03
4. Letter from Civic Unit, dated February 12, 2020
5. Letter from Civic Unit, dated June 4, 2021
6. Letter from Civic Unit, dated October 4, 2021
7. Letter from staff of the California Coastal Commission, dated August 5, 2021
8. Email from Belinda and Jim Zell, dated April 15, 2021
9. Letter from Jack Siedman, legal counsel for the property owner at 17 Calle Del Onda, dated June 29, 2021
10. Email from Patricia Conway, legal counsel for the property owner at 24 Calle Del Sierra, dated July 8, 2021

11. Letter from Elizabeth A. Brekus, legal counsel for the property owner at 24 Calle Del Sierra, dated November 5, 2021
12. Link to the Initial Study/Proposed Mitigated Negative Declaration prepared for Stinson Beach County Water District by WRA Environmental Consultants:
https://www.marincounty.org/-/media/files/departments/cd/planning/currentplanning/projects/brianjohnsontrust_p3049_cp_sb/p3049_initial-study.pdf?la=en
13. Project plans

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION PARTIALLY APPROVING AND PARTIALLY DENYING THE BRIAN JOHNSON TRUST COASTAL PERMIT 21 CALLE DEL ONDA, STINSON BEACH ASSESSOR’S PARCEL 195-162-49

SECTION I: FINDINGS

1. WHEREAS, Brian Johnson, on behalf of the owners, the Brian Johnson Trust, has submitted a Coastal Permit application to construct a new two-story, 1,488 square-foot single-family residence and a 288 square-foot detached garage on a vacant lot in Stinson Beach. The 1,488 square feet of proposed development would result in a floor area ratio of 9.8 percent on the 15,200 square-foot lot. The proposed building would reach a maximum height 25 feet above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 53 feet from the northeastern side property line; 90 feet from the southwestern side property line; 25 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new driveway, decks, and landscaping improvements.

The property is located at 21 Calle Del Onda, Stinson Beach and is further identified as Assessor’s Parcel 195-162-49.

2. WHEREAS, on November 22, 2021, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project.

3. WHEREAS, an Initial Study has been prepared by the Stinson Beach County Water District (SBCWD) pursuant to the requirements of the California Environmental Quality Act (CEQA) and qualified for a Mitigated Negative Declaration because all impacts to the environment identified as potentially significant are to be mitigated to a less than significant level. The SBCWD adopted the Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program as the lead agency responsible for the environmental review on July 18, 2020.

4. WHEREAS, under State CEQA Guidelines Section 15367, the SBCWD is the Lead Agency responsible for carrying out or approving a project and implementing the CEQA process and preparing the CEQA document for the project (State CEQA Guidelines Section 15050).

5. WHEREAS, the County is a Responsible Agency under the State CEQA Guidelines Section 15381 and has reviewed and considered the information contained in the 2020 Mitigated Negative Declaration prior to acting upon the project.

6. WHEREAS, the project is consistent with the mandatory findings for Coastal Permit approval (Marin County Local Coastal Program, Implementation Plan Section 22.70.070).

A. Coastal Access. The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Coastal Access section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.180

(Public Coastal Access). Where the project is located between the nearest public road and the sea, a specific finding must be made that the proposed project, as conditioned, is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act (commencing with Section 30200 of the Public Resources Code)

The project is proposed entirely within the subject property; therefore, the project would not alter the existing vertical public beach access provided by the terminus of Calle del Onda located adjacent to the northwestern property line of the subject property. Further, the project entails a proposed offer to dedicate a 40-foot-wide lateral access easement located across the southern and most seaward portion of the property. The proposed lateral public access easement would result in enhanced shoreline access as the subject property does not currently provide any access easements located along the beach. However, to further ensure consistency with the Marin County Local Coastal Program, a condition of approval requires that the applicant shall record an offer of dedication for the public use of the proposed 40-foot-wide and 80-foot-long lateral access easement prior to issuance of a Building Permit.

The project is consistent with the LUP public coastal access policies (C-PA-3, C-PA-4, C-PA-17, C-PA-21) and this finding because the project site contains adequate nearby public access, and the applicant has proposed new public coastal access.

B. Biological Resources. The proposed project, as conditioned, is consistent with the applicable policies contained in the Biological Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.050 (Biological Resources).

The Marin County Land Use Plan includes policies to protect environmentally sensitive habitat areas (ESHAs), including C-BIO-1 which states:

“1. An environmentally sensitive habitat area (ESHA) is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

2. ESHA consists of three general categories: wetlands, streams and riparian vegetation, and terrestrial ESHAs. Terrestrial ESHA includes non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats); and riparian vegetation that is not associated with a perennial or intermittent stream. The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.”

A Biological Site Assessment (BSA) of the site was conducted in October 2019 by WRA, Environmental Consultants, which concluded that the proposed project, inclusive of a new septic system and single-family residence, would not result in any potentially significant adverse impacts on special-status species and their habitat. Further, the applicant submitted a supplemental letter prepared by WRA, Environmental Consultants dated October 4, 2021, which affirmed that the site does not contain environmentally sensitive

habitat areas including coastal dunes, wetlands, or streams. Therefore, the project would result in no new potentially significant biological impacts to those resources.

Per the BSA dated October 2019 and further clarified in the supplemental letter dated October 1, 2021, prepared by WRA Environmental Consultants, the project site does not support streams, wetlands, or coastal dunes and supports three natural communities: developed, sandy beach, and *Carpobrotus edulis* semi-natural stands (ice plant mats) that contain several dominant plants considered to be highly invasive by the California Invasive Plant Council. Per the BSA, the ice plant mat community covers 0.16 acres of the northern portion of the site, the sandy beach community covers 0.20 acres of the southern portion of the site, and 106.22 square feet of the northwestern portion of the site is developed with the remains of a previously developed single-family residence.

The supplemental letter further clarifies that the western portion of the site is characterized by sandy beach habitat in which the parcel contains unvegetated and unconsolidated materials (sands). Further, the sandy beach habitat does not contain dune-like attributes such as dune vegetation or morphological characteristics shaped by wind and wave energy. Therefore, the project site does not contain environmentally sensitive habitat areas. As such, ESHA buffers are not required pursuant to LUP policy C-BIO-3.

Though ESHA buffers are not required, the project has been designed to further comply with the stringline method of preventing beach encroachment pursuant to LUP Policy C-BIO-8, which states:

“In a developed area where most lots are developed and where there are relatively few vacant lots, no part of a proposed new development (other than an allowable shoreline protective device), including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. Enclosed living space in a new unit or addition shall not extend farther seaward than a second line drawn between the most seaward portions of the enclosed living space of the adjacent structures.”

On October 4, 2021, the applicant provided a revised site plan drawing that provides a stringline utilizing an existing structure on the adjacent property located immediately to the southeast of the subject property and an existing structure on the adjacent property located immediately to the northwest of the subject property pursuant to LUP Policy C-BIO-8. The extent of proposed development, including decks, would be located on the landward side of the stringline and would therefore prevent new development from encroaching farther onto the beach than the most seaward portions of existing adjacent structures. An alternative stringline provided by the applicant utilizing structures from other properties further demonstrates that the proposed development would not encroach further onto the sandy beach than the existing pattern of development of other shoreline lots in the vicinity.

Therefore, the project is consistent with the LUP biological resources policies for the protection of natural transition and connection associated with streams, wetlands, and coastal dunes (C-BIO-1, C-BIO-2, C-BIO-3, C-BIO-7, C-BIO-8, C-BIO-14, C-BIO-23) and this finding because the project would not substantially alter the margins along environmentally sensitive habitat areas including riparian corridors, wetlands, baylands, woodlands, or coastal dunes where none currently exist on the project site. Further, the project would not entail the irreplaceable removal of groves of trees that provide wildlife

nesting and roosting areas as verified by the BSA dated October 2019 and further clarified in a supplemental letter dated October 1, 2021, prepared by WRA Environmental Consultants.

- C. Environmental Hazards. The proposed project, as conditioned, is consistent with the applicable policies contained in the Environmental Hazards section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.060 (Environmental Hazards).**

On July 13, 2021, the Board of Supervisors voted to activate the certified Local Coastal Program (LCP) Amendments. All portions of Marin's LCP Amendments have been approved by the Board of Supervisors and certified by the Coastal Commission with the exception of chapters related to environmental hazards, which remain the subject of ongoing work and public input. As a result, those sections of the original versions of the LCP, certified by the Coastal Commission in 1980 (Unit I) in 1981 (Unit II) and the Marin County Interim Code Sections 22.56.130I.H, 22.56.130I.K, and 22.56.130I.L still apply to environmental hazards and are further discussed in section 1.7 below.

- D. Agriculture and Mariculture. The proposed project, as conditioned, is consistent with the applicable policies contained in the Agriculture and Mariculture sections of the Marin County Land Use Plan and the applicable agricultural and maricultural standards contained in Chapter 22.32.**

The project entails the construction of a single-family residence and is located within an area governed by a conventional residential zoning district, C-R2 (Coastal, Residential, Two-Family). As the project does not entail agricultural or maricultural uses, this finding does not apply.

- E. Water Resources. The proposed project, as conditioned, is consistent with the applicable policies contained in the Water Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.080 (Water Resources).**

The project entails site work and the construction of new pervious and impervious surfaces on a vacant property. The project site is relatively flat with an average slope of seven percent. The project site consists of non-native vegetation and is located on a sandy beach.

The project would result in 2,145.38 square feet of new impervious surface. Associated earthwork would result in 39.81 cubic yards of cut and 66.52 cubic yards of fill, resulting in a net import of 26.71 cubic yards. The applicant provided a grading and drainage plan that was reviewed and found acceptable by the Department of Public Works. Additionally, an engineered grading and drainage plan depicting and describing best management practices and a storm water control plan would be required prior to the issuance of a building permit for the project.

Though the project entails minor alterations of the site including the removal of non-native vegetation, the project has been sited to cluster development on the most landward portions of the site and would retain portions of the site containing sandy beach to the greatest extent possible. As such, the project is consistent with the standards related to

water quality and grading and excavation because it entails adequate water quality and erosion control measures and associated grading would be the minimum necessary for the development.

Therefore, the project is consistent with the LUP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff that would adversely affect the quality of coastal waters (C-WR-1, C-WR-2, C-WR-3, C-WR-6) because the grading and drainage improvements would comply with the Marin County standards and best management practices required by the Department of Public Works.

F. Community Design. The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Design section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.100 (Community Design).

The project entails the development of a single-family residence proposed within the residential neighborhood of Calle Del Onda located along the shoreline of the Stinson Beach community.

The neighborhood is comprised of a varied mix of architectural styles consisting of both one-story and two-story homes that were constructed before and after the adoption of Base Flood Elevation (BFE) requirements of the Federal Emergency Management Agency (FEMA), resulting in homes with varied heights. The new residence is proposed to be located within the VE FEMA zone flood zone where BFE requirements are applicable and project components such as a septic system that would be located within the AO FEMA flood zone.

The property is located in an area governed by the C-R2 (Coastal, Residential, Two-family) zoning district where a maximum height of 25 feet is allowed pursuant to the Marin County Implementation Plan, Table 5-4-a. The residence is proposed to reach a maximum height of 25 feet above existing grade.

The project site is not located on or near a visually prominent ridgeline. Uninterrupted views of the ocean from Hwy 1 are blocked by existing development and naturally occurring topographic features.

The project has been sited such that it would preserve views of the ocean as seen from public viewing places such as the terminus of Calle Del Onda. Views of the distant Mount Tamalpais to the north of the subject property from the ocean would not be further affected than existing conditions as the project has been designed to be set back from the seaward portion of the property and in alignment with the existing pattern of residential development in the neighborhood.

As such, the project is consistent with the Stinson Beach Community Standards pursuant to Marin County Implementation Plan Section 22.66.040, LUP policies related to development in Stinson Beach (C-SB-1), and LUP community design policies for the protection of scenic and visual qualities of the coast (C-DES-2 and C-DES-3) because the height, scale and design of the residence is compatible with the existing pattern of development in the neighborhood. Further, the project would not result in adverse impacts to existing scenic views to and from the ocean as seen from public viewing places and

would fit within the context of the surrounding natural and built environment, consistent with LUP community design policies (C-DES-1 and C-DES-4).

G. Community Development. The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Development section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.110 (Community Development).

The project site is located within a developed residential neighborhood located along the shoreline of the Marin County Park's Upton Beach in the community of Stinson Beach. Further, the project entails the construction of a residence consistent with the governing residential zoning district, C-R2 (Coastal, Residential, Two-family). Therefore, the project is consistent with this finding.

H. Energy. The proposed project, as conditioned, is consistent with the applicable policies contained in the Energy section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.120 (Energy).

The project would be required to satisfy all energy-saving standards as required by the County's Building and Safety Division prior to the issuance of a building permit. Therefore, the project is consistent with the LUP energy policies (LUP Policies EH-2.1, EH-2.3, and CD-2.8) and this finding because it would be constructed in conformance with County energy efficiency standards, as verified during review of the Building Permit application.

I. Housing. The proposed project, as conditioned, is consistent with the applicable policies contained in the Housing section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.130 (Housing).

The proposed project would not result in the removal or demolition of low and/or moderate-income housing. Therefore, the project is consistent with the LUP housing policies to address low- and moderate-income housing needs in the Coastal Zone (LUP Policies C-HS-1) because the project does not entail the demolition of existing deed restricted affordable housing and would not affect the available housing stock in the surrounding community.

J. Public Facilities and Services. The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Facilities and Services section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.140 (Public Facilities and Services).

The project is located on an existing lot and would be provided water service by the Stinson Beach County Water District. The project site has further received the district's approval for an onsite septic system on July 18, 2020. Therefore, the project is consistent with the LUP public facilities and services policies (C-PFS-1 and C-PFS-7) and this finding because the project would be adequately served by existing public water service and an onsite sewage disposal system located on the existing residential lot that would be adequately sized to meet the needs of the development, as verified during review of the Building Permit application.

- K. Transportation. The proposed project, as conditioned, is consistent with the applicable policies contained in the Transportation section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.150 (Transportation).**

The project is currently accessed from Calle Del Onda and would not entail any alterations or impacts to existing roadway facilities or public parking facilities. Therefore, the project is consistent with the LUP transportation policies (C-TR-1 and C-TR-2) and this finding because the project would entail any alterations to existing roadway facilities or result in impacts to the scenic quality of Highway One.

- L. Historical and Archaeological Resources. The proposed project, as conditioned, is consistent with the applicable policies contained in the Historical and Archaeological Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.160 (Historical and Archaeological Resources).**

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. Therefore, the project is consistent with the LUP historical and archaeological resources policies (C-HAR-2, C-HAR-8) and this finding because the project site is not located within any mapped historic district boundaries and would not affect historical, archaeological, or paleontological resources.

- M. Parks, Recreation, and Visitor-Serving Uses. The proposed project, as conditioned, is consistent with the applicable policies contained in the the Parks, Recreation, and Visitor-Serving Uses section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.170 (Parks, Recreation, and Visitor-Serving Uses).**

The project site is located adjacent to the Marin County Park's Upton Beach which is accessible through Calle Del Onda located along the northwestern property line of the subject property amongst other public accesses located along the beach. The project does not entail any construction of development that would encroach into existing public access points to and from surrounding public parks, recreation, or visitor-serving uses, and the project site is located within a residential zoning district. Therefore, the project is consistent with the LUP policies for parks, recreation, and visitor serving uses (C-PK-1 and C-PK-3) and this finding because the project is proposed entirely on an existing residential property that is not located within a mixed-use coastal village commercial/residential zone and does not entail any construction of development that would encroach into existing public access points to and from surrounding public parks, recreation, or visitor-serving uses.

7. **WHEREAS**, the project is consistent with the mandatory findings for Coastal Permit approval pursuant to Marin County Interim Code Sections 22.56.130I.H, 22.56.130I.K, and 22.56.130I.L.

- A. Dune Protection (Marin County Interim Code Section 22.56.130I.H)**

The project site is located adjacent to Marin County Park's Upton Beach and is not located adjacent to the undeveloped right-of-way known as Mira Vista Street in Stinson Beach.

As previously discussed above in Section 1.6.B, the subject property does not contain coastal dunes and is instead characterized by sandy beach and a community of ice plant mats as verified by the Biological Site Assessment prepared by WRA, Environmental Consultants, dated October 2019 and further affirmed in the supplemental letter prepared by WRA, Environmental Consultants, dated October 4, 2019. Further, the project has been sited to be located on the landward side of the stringline of existing development as described in Section 1.6.B above and would be located 50 feet landward from a proposed 40-foot lateral easement locate along the southern portions of the property adjacent to the shoreline of Upton Beach. Therefore, the project is consistent with this finding because no dunes are located on the site and the project has been sited landward from the sandy beach to the greatest extent possible.

B. Shoreline Protection (Marin County Interim Code Section 22.56.130I.K)

The proposed project is not located within a bluff erosion zone. However, the project entails the construction of a septic system located in proximity to a beach that would utilize a raised bed with a retaining wall to increase separation from seasonal high groundwater and to protect the dispersal field from potential wave erosion.

The applicant provided a coastal engineering analysis and geotechnical report prepared by engineering consultants, Noble Consultants, dated June 22, 2020. Additionally, Noble Consultants prepared a supplemental letter dated May 13, 2021, further clarifying flood risks including impacts during high tides and sea level rise. The analysis concluded that while the septic system may be inundated in 50 years during a 100-year storm event, it will not be directly exposed to wave action from the ocean.

The septic system is proposed to be located on the most landward portion of the subject property as required by the Stinson Beach County Water District's standards for onsite sewage disposal systems. Given the constraints of the site, there is no other nonstructural alternative that is practical or preferable for the location of the septic system and its appurtenant structures. The condition causing the system design is specific to the available project siting and the risks posed by sea level rise and flooding rather than a general erosion trend. The septic system is located more than 350 feet away from Easkoot Creek and has been set back on the most landward portion of the site to the greatest extent possible. Further, the septic system would not be located in any wetlands or other significant resource, or habitat area as verified by the Biological Site Assessment discussed above. The septic system design, along with the siting of the residence would not result in the reduction of public access or restrict navigation or other coastal uses.

Further, the applicant has voluntarily proposed to record a deed restriction that permits no future shoreline protection and requires the removal of all structures authorized by Coastal Permit approval at such time as a legally authorized public agency issues an order to do so. To further ensure consistency with the Marin County Local Program, a condition of approval requires that before issuance of a building permit, the applicant shall record a deed restriction that permits no future shoreline protection and requires the removal of all structures authorized by Coastal Permit approval at such time as a legally authorized public agency issues an order to do so.

Additionally, per the Preliminary Geotechnical Feasibility Study prepared by Murray Engineers Inc, dated January 14, 2021, though the project site is not located within a

State-defined earthquake fault zone for the San Andreas fault, the project site would be subject to strong to very violent ground shaking during an earthquake, the Marin County Community Development Agency, Building and Safety Division will require seismic compliance with the California Building Code prior to issuance of a project building permit. Therefore, the project is consistent with this finding.

C. Geologic Hazards (Marin County Interim Code Section 22.56.130I.L)

The Marin County Local Coastal Program Unit 1, Policy IV-30 states:

“[...] 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.”

Additionally, the Marin County Interim Development Code (MCC) Section 22.56.130I.L(2) addresses floodplain development and requires that:

“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.”

Further, on July 28, 2015, the Marin County Community Development Agency, Planning Division issued a determination and mailed to owners of property in Stinson Beach a memorandum related to the floodplain of Easkoot Creek. The determination provided the following:

“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.”

The project entails the construction of a new septic system and a detached accessory structure (garage) that would be located within the AO FEMA flood zone and would be inconsistent with this finding. As the minimum necessary use of the property for single-family dwellings does not require a detached garage and as the project site would provide opportunities for off-site parking, the detached garage is therefore denied. A condition of approval requires that the project be modified to remove the detached garage.

A septic system is required for residential development on the site due to the lack of public sewage facilities. The project proposes the construction of a new septic system that is inconsistent with Policy IV-30 and Marin County Interim Code Section 22.56.130L as discussed above. As the inclusion of an onsite sewage disposal system would accommodate residential development that would allow for the minimum necessary use of the property, findings have been made to address the potential for a takings in Section 1.8 below pursuant to Marin County Local Coastal Program, Implementation Plan Section 22.70.180.C.

8. **WHEREAS**, the strict application of the Marin County Local Coastal Program Unit 1, Policy IV-30 and Marin County Interim Code Section 22.56.130I.K would constitute a potential

regulatory taking of the property pursuant to the supplemental findings for Coastal Permit approval (Marin County Local Coastal Program, Implementation Plan Section 22.70.180.C).

A. Based on the information provided by the applicant, as well as any other relevant evidence, there is no potential development consistent with the LCP policies, standards and provisions that would avoid a taking of the applicant's property.

Developing a residence on the property requires developing an onsite septic system to treat wastewater as there is no publicly available sewage disposal. Due to the location of the project site and its proximity to a beach, the septic design relies on a raised bed for wastewater treatment surrounded by a retaining wall to increase separation from seasonal high groundwater and to protect the dispersal field from flooding and potential wave erosion. The septic system is located within the AO FEMA flood zone, inconsistent with the Marin County Local Coastal Program Unit 1, Policy IV(30) as described in Section 1.6.C(3) above.

Based upon the information provided by the applicant pursuant to Marin County LCP Implementation Program Section 22.70.180, the subject property has been in continuous ownership by the applicant and the applicant's family since the 1930s, with transfers of interest amongst family owners occurring over time, prior to the adoption of regulations related to coastal development by the County of Marin and subsequent regulatory changes.

The County of Marin adopted the Marin County Local Coastal Program (LCP), Unit 1 in 1982, which included Policy IV-30. However, clarification from the County of Marin related to FEMA flood zones and the Easkoot Creek floodplain was issued on July 28, 2015, via a memorandum to property owners within the vicinity, which included the following:

“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.”

The applicant, Brian Johnson, increased his interest in the property in 1979 prior to the adoption of the LCP, Unit 1 and again in 2002 prior to the County's clarification for the Eastkoot Creek floodplain. As the applicant has maintained partial ownership of the subject property since before the clarification of the restrictions imposed by Policy IV-30, it is reasonable to conclude that the property owners were unaware that a new septic system would be inconsistent with Policy IV-30 and MCC Section 22.56.130.I.L(2). The applicant and his family have owned the property with the reasonable expectation that a new septic system could be developed on the property so as to support a single-family residence.

B. The use proposed by the applicant is consistent with the applicable zoning.

The property is located in an area governed by the C-R2 (Coastal, Residential, Two-family) zoning district. The proposed single-family residence is an allowable use identified as “principally permitted” pursuant to Marin County LCP Implementation Program, Table

5-2-C. The project is consistent with the applicable zoning because it entails a principally permitted use consistent with the applicable zoning.

C. The use and project design, siting, and size are the minimum necessary to avoid a taking.

Here, almost just the same as in Coastal Commission Appeal No. A-2-MAR-15-0074 (Hjorth Residence – Stinson Beach), the “overwhelming fact” is that the Applicant proposes a modestly-sized, 1,488 square-foot home on a vacant lot that is zoned residential. Furthermore, also similar to Appeal No. A-2-MAR-15-0074, the Project Planner examined an alternative and imposed it in the recommended action as discussed in section 7.A above, entirely eliminating the proposed 288 square-foot detached garage, making a “modest home more modest”.

D. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified LCP other than the provisions for which the exception(s) is (are) necessary to avoid a taking.

The development of a septic system and the potential for the future development of a single-family residence was evaluated through an Initial Study prepared by WRA, Environmental Consultants and a Mitigated Negative Declaration was adopted by the Stinson Beach County Water District, which concluded that the project as mitigated would not result in significant environmental impacts. Though the proposed septic system is inconsistent with provisions for floodplain development pursuant to the Marin County Local Coastal Program Unit 1, Policy IV(30) and Marin County Interim Code Section 22.56.130I.K, the impacts of the septic system have been mitigated such that the project would result in less-than-significant impacts to the environment including the conditions of adjacent watercourses, wetlands, subsurface water, the health and safety of persons residing or working in the neighborhood of the property, or the general health and safety of the public.

Further, the project is otherwise consistent with all provisions of the certified Local Coastal Program as described in Section 1.6 above. To further ensure compliance with the LCP, a condition of approval, Marin County Uniformly Applied Conditions 2021, Special Condition Number 4, herein requires the owners to execute and record a waiver of public liability for the project holding the County of Marin, other governmental agencies and the public harmless because of loss experienced by geologic activities.

E. The development will not result in a public nuisance. If it would be a public nuisance, the development shall be denied.

The development will not result in a public nuisance as it entails a use and the development of the property that are consistent with the governing residential zone, the septic standards of the SBCWD, and the Marin County Local Coastal Program.

SECTION II: ACTION

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

This planning permit is an entitlement to apply for construction permits, not a guarantee that they can be obtained, and it does not establish any vested rights. This decision certifies the proposed project's conformance with the requirements of the Marin County Local Coastal Program 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 Planning Commission hereby approves the Brian Johnson Trust Coastal Permit subject to the conditions as specified below:

CDA-Planning Division

1. This Coastal Permit approval authorizes the construction of a new two-story, 1,488 square-foot single-family residence and associated septic system on a vacant lot in Stinson Beach. The 1,488 square feet of approved development would result in a floor area ratio of 9.8 percent on the 15,200 square-foot lot. The approved building would reach a maximum height of 25 feet above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 53 feet from the northeastern side property line; 90 feet from the southwestern side property line; 25 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new driveway, decks, and landscaping improvements.
2. Plans submitted for a Building Permit shall substantially conform to plans identified as Exhibit A, entitled "Reconstruction of Residence," consisting of 19 sheets prepared by Civic Unit, received in final form on June 8, 2021, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall modify the project to remove the detached accessory building (garage).
4. BEFORE ISSUANCE OF A BUILDING PERMIT, **and pursuant to the applicant's voluntary proposal**, the applicant shall record a deed restriction against the title to the property that shall serve to notify all current and future owners that the development authorized by this Coastal Permit, including, but not limited to, the residential building and other development authorized under this Coastal Permit, shall be removed in part or in whole, when any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline protective device; or in the event that coastal hazards eliminate access for emergency vehicles, residents, and/or guests to the site due to the degradation and eventual failure of Calle Del Onda as a viable roadway. Marin County shall not be required to maintain access and/or utility infrastructure to serve the approved development in such circumstances. Development associated with removal of the residential building or other development authorized by this Coastal Permit shall require Director approval of a plan to accommodate same prior to any such activities. No shoreline protective device shall be permitted on this property in perpetuity.

5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall record an offer of dedication for a minimum 40-foot-wide and 80-foot-long lateral public access easement to be located across the southern and most seaward portion of the property for public use in a form acceptable to the Community Development Director, County Counsel, and the California Coastal Commission Executive Director.
6. The project shall conform to the Planning Division's "Uniformly Applied Conditions 2021" with respect to all of the standard conditions of approval and the following special conditions: 4 (waiver of liability).

SECTION IV: VESTING

NOW THEREFORE, BE IT RESOLVED that unless conditions of approval establish a different time limit or an extension to vest has been granted, any permit or entitlement not vested within three years of the date of the approval 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.

SECTION V: APPEAL RIGHTS

NOW, THEREFORE, BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. This decision is final unless appealed to the Board of Supervisors. A Petition for Appeal and the required fee must be submitted in the Community Development Agency, Planning Division, Room 308, Civic Center, San Rafael, no later than ten working days from the date of this decision.

SECTION VI: ADOPTION

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin held on this 22nd day of November 2021 by the following vote:

AYES: COMMISSIONERS

NOES:

ABSENT:

Christina Desser
MARIN COUNTY PLANNING COMMISSION

Attest:

Ana Hilda Mosher