

From: [Bridger Mitchell](#)
To: [Cardoza, Sabrina](#)
Subject: Johnson coasta permit P3049
Date: Friday, November 19, 2021 1:22:39 PM
Attachments: [Mitchell comment 11-19-21.pdf](#)

Hi, Sabrina,
please find attached my comments on the application for 21 Calle del Onda, Stinson Beach.
Thank you.
-Bridger

To: Sabrina Cardoza
Re: Brian Johnson Trust Coastal Permit (P3049)
21 Calle del Onda, Stinson Beach
From: Bridger Mitchell
Date: November 19, 2021

Per the staff report, “the application was **deemed complete on July 7, 2021. ... On August 12, 2021, the certified LCP amendments were activated** including policies under the Land Use Plan (LUP) and the Implementation Plan (IP), ...

The analysis and findings in sections 6 (Coastal Permit) and 8 (Regulatory Takings) of the Draft Resolution in the staff report rely on components of the LCP Implementation Plan (specifically, 22.64 and 22.70) that were not in effect at the time the application for this permit was deemed complete by the CDA:

“ **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**).”

“**The proposed project, as conditioned, is consistent with ... the applicable standards contained in ...**

- **Section 22.64.180 (Public Coastal Access)**
- **Section 22.64.050 (Biological Resources).**
- **Section 22.64.180 (Public Coastal Access0**
- **Section 22.64.080 (Water Resources)**
- **Section 22.64.100 (Community Design).**
- **Section 22.64.110 (Community Development)**
- **Section 22.64.120 (Energy).**
- **Section 22.64.130 (Housing).**
- **Section 22.64.140 (Public Facilities and Services).**
- **Section 22.64.150 (Transportation).**
- **Section 22.64.170 (Parks, Recreation, and Visitor-Serving Uses).**
- **Section 22.64.160 (Historical and Archaeological Resources). “**

“ **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**). “

The Draft Resolution cannot make the findings necessary to approve this application for a Coastal Permit under Marin’s LCP.

From: [Rexing, Stephanie@Coastal](mailto:Rexing,Stephanie@Coastal)
To: [Cardoza, Sabrina](mailto:Cardoza,Sabrina)
Cc: [KoppmanNorton, Julia@Coastal](mailto:KoppmanNorton,Julia@Coastal)
Subject: RE: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit
Date: Monday, November 22, 2021 10:08:28 AM

Hi Sabrina,

Thank you for forwarding the link to the staff report, project plans, and files for the proposed single family residence, detached garage, new septic, driveway, decks, and landscaping at 21 Calle del Onda in Stinson Beach. Commission staff has commented extensively on this proposal in the past including in comment letters dated March 31, 2016; June 30, 2016; March 16, 2021; and most recently, August 5, 2021, all of which are in the County's records available on the project website for this proposal. Commission staff has expressed concerns regarding potential impacts to environmentally sensitive habitat areas, siting such development in hazardous areas generally, including specifically the LCP's prohibition on new development in the designated Easkoot Creek 100-year floodplain, and potential takings.

The County's staff report to the Planning Commission for today's (November 22, 2021) hearing regarding the CDP for this proposal recommends a partial denial and partial approval of the proposal, with conditions. County staff is recommending the garage portion of the proposal be denied, but is recommending approval of all other elements, including a septic system sited in the 100-year floodplain of Easkoot Creek/AO FEMA flood zone, which is not consistent with LCP Unit 1, Policy IV-30 and Marin County Interim Code Section 22.56.130L. The County is approving the septic despite LCP policies that would require otherwise in order to avoid a potential taking of private property. In approving the septic system, the County found that since a septic system is required to support the proposed residential development, this project element is required to be approved in order to allow for the "minimum necessary use of the property". Specifically, the County is recommending an approval of the septic system in an area where the LCP would not normally allow it, in order to "avoid a taking of the applicant's property." The County staff report concludes that the residence and septic can be approved in order to avoid a taking because "there is no other nonstructural alternative that is practical or preferable for the location of the septic", given the constraints of the site. The takings analysis provided in the County staff report concludes that the applicant obtained ownership interest in the property in 1979, prior to the Easkoot floodplain development prohibition, thus establishing the applicant's reasonable expectation that the septic could be developed onsite to support a single family residence. The County staff report further concludes that the 1,488 sf home (without the garage aspects, which are being denied), plus the other elements including the septic, "are the minimum necessary to avoid a taking" and that the project as approved by the County is the "least environmentally damaging project alternative".

While the house is reasonably sized, and similar to surrounding development, it is not clear from the County's staff report what other alternative project configurations were analyzed to draw the conclusion that the approved project is the "minimum" configuration necessary to avoid a takings. Were smaller homes or different configurations considered? If so, the County should include this analysis in their report to support their conclusions. In addition, the approved septic still relies on being raised and surrounded by retaining walls to "increase separation from seasonal high groundwater and to protect (it)...from flooding and potential wave erosion" in contradiction with

LCP policies that prohibit shoreline protective devices for new development, and in conflict with the County's conclusion that the County approved project is "consistent with all provisions of the certified LCP other than the provisions for which exception is necessary to avoid a taking". The County should require that the septic be redesigned without the retaining wall protective devices.

Finally, while the County's conditions of approval do require the applicant to waive liability, to record a deed restriction that would prohibit future shoreline armoring, and would require removal of all structures approved via this CDP at such time as a legally authorized public agency issues an order to do so, Commission staff still recommends the County require via a condition of approval that the applicant assumes the risks associated with the proposed development in such a hazardous location, and indemnifies the County against damage due to such hazards. In addition, Commission staff also still recommends the County condition the project to require that disclosure documents related to any future sale of the residence notify potential buyers of the terms and conditions of the permit, including explicitly the coastal hazards requirements, and require that a copy of the CDP be provided in all real estate disclosures.

In short, Commission staff recommends the following:

- **the County should include alternative configurations analysis in their report to support their takings conclusions**
- **the County should require that the septic be redesigned without the retaining wall protective devices**
- **the County should require via a condition of approval that the applicant assumes the risks associated with the proposed development in such a hazardous location, and indemnifies the County against damage due to such hazards**
- **the County should condition the project to require that disclosure documents related to any future sale of the residence notify potential buyers of the terms and conditions of the permit, including explicitly the coastal hazards requirements, and require that a copy of the CDP be provided in all real estate disclosures**

Please distribute these comments to Planning Commissioners and include them in the record for today's hearing. Let me know if you have any questions or would like to discuss. Thank you!

Stephanie R. Rexing
District Manager
North Central Coast District
California Coastal Commission
(415)-904-5260

From: Cardoza, Sabrina <scardoza@marincounty.org>
Sent: Monday, November 15, 2021 11:43 AM
To: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>
Cc: KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>
Subject: RE: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit

Hi Stephanie,

The staff report, which includes the takings analysis, is now available of the project website at this link:

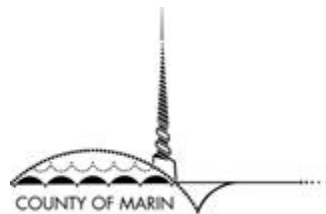
https://www.marincounty.org/depts/cd/divisions/planning/projects/stinson-beach/brian_johnson_trust_p3049_cp_sb

Best,

Sabrina Cardoza (she/her/hers)

***** Please note that I may be working remotely and am limited to email until further notice. Phone calls will be responded to in the order they are received. *****

Senior Planner | County of Marin
Community Development Agency, Planning Division
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
415-473-3607 T
415-473-7880 F



From: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>
Sent: Wednesday, November 10, 2021 3:25 PM
To: Cardoza, Sabrina <scardoza@marincounty.org>
Cc: KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>
Subject: RE: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit

Thank you, Sabrina.

I will review the latest re: this project against our comment letters, and let you know whether or not Commission staff has remaining concerns. I did have a conversation with the agent on this project, Steve Kinsey, in October, and he mentioned that he thought the County would be doing a takings analysis in order to approve this project. Can you let me know if that's the case and when that analysis will be ready for us to review?

Thanks!

Stephanie R. Rexing
District Manager
North Central Coast District
California Coastal Commission
(415)-904-5260

From: Cardoza, Sabrina <scardoza@marincounty.org>
Sent: Friday, November 5, 2021 11:20 AM
To: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>
Cc: KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>
Subject: RE: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit

Hi Stephanie,

Yes, the project is going before the Planning Commission for a decision on November 22, 2021. The staff report should be published on the project webpage, linked below, by November 15. However, if you are able to provide any comments ahead of that, that is always appreciated. Of course, you may still submit comments following the publishing of the staff report that will be provided to the Planning Commission.

https://www.marincounty.org/depts/cd/divisions/planning/projects/stinson-beach/brian_johnson_trust_p3049_cp_sb

Thank you,

Sabrina Cardoza (she/her/hers)

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From: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>
Sent: Friday, November 5, 2021 11:07 AM
To: Cardoza, Sabrina <scardoza@marincounty.org>
Cc: KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>
Subject: RE: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit

Thanks, Sabrina!

Can you let me know of your timeline locally on this one? We need to review this stuff pretty closely given our past comments and involvement here, and being down a planner means having deadlines can help us triage. Thanks!

From: Cardoza, Sabrina <scardoza@marincounty.org>
Sent: Thursday, October 21, 2021 10:27 AM
To: KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>
Cc: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>; Pfeifer, Sara@Coastal <Sara.Pfeifer@coastal.ca.gov>
Subject: 3rd Transmittal RE: P3049 Brian Johnson Trust Coastal Permit

Hi Julia,

I understand that Sara's last day with the Coastal Commission is tomorrow. As such, I am sending you a third transmittal regarding the subject project. Please see attached.

Thank you,
Sabrina Cardoza (she/her/hers)

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From: Pfeifer, Sara@Coastal <Sara.Pfeifer@coastal.ca.gov>
Sent: Thursday, August 5, 2021 10:38 AM
To: Cardoza, Sabrina <scardoza@marincounty.org>
Cc: Rexing, Stephanie@Coastal <Stephanie.Rexing@coastal.ca.gov>; KoppmanNorton, Julia@Coastal <julia.koppmannorton@coastal.ca.gov>; Steve Kinsey <steve@civicknit.com>
Subject: P3049 Brian Johnson Trust Coastal Permit

Good morning Sabrina,

Thank you for the opportunity to provide comments on the proposed development located at 21 Calle del Onda in Stinson Beach. Please find Commission staff's concerns described in the attached letter, as they relate to the Applicant's most recent submittal, provided to the County in June, 2021. I've also attached a copy of our March 16, 2021 letter for your reference. The issues we identified with the recent submittal relate to dune habitat and ESHA, coastal hazards, and the potential for a takings analysis. Please let me know if you have questions about our comments or would like to discuss further.

Thank you,

Sara Pfeifer | Coastal Planner

CALIFORNIA COASTAL COMMISSION

North Central Coast District Office

(415) 904-5255 | sara.pfeifer@coastal.ca.gov

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