

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

November 17, 2015

Brian C. Crawford
DIRECTOR

Thomas Lai
ASSISTANT DIRECTOR

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

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
www.marincounty.org/plan

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
Assessor's Parcel 195-132-03

RECOMMENDATION:

On behalf of the Planning Commission, staff recommends the Board deny the appeal filed by Hurley, Lowry, Et Al. and sustain the Planning Commission's action by adopting the attached resolution to approve the project.

SUMMARY:

On February 9, 2015, the Planning Commission upheld by a 6-0 vote, the Deputy Zoning Administrator's decision conditionally approving the Heidi Hjorth Coastal Permit application to construct a new 1,400 square foot residence with an attached 535 square foot garage on a 4,800 square foot vacant lot. The appellants, Hurley, Lowry, Et Al. filed a subsequent appeal of the Planning Commission's decision, asserting among other things that no development can be approved within the floodplain for Easkoot Creek under the Local Coastal Program (LCP). The Board considered the appeal on April 7, 2015 and continued the hearing in order for staff to further research the applicability of the LCP Unit I Policy IV(30) that restricts development in the 100-year floodplain of Easkoot Creek and consult with the California Coastal Commission. After being informed of the Coastal Commission staff determination that the LCP would apply to this project, Len Rifkind, legal counsel representing the applicant Heidi Hjorth, requested the matter be reheard by the Board of Supervisors. (Please refer to Attachment 3.)

County Counsel has reviewed the administrative record for the appeal, in light of the above flood plain policy, and advises that approval of a project that is as consistent as possible with all other applicable policies would be prudent where the strict application of a land use policy constitutes a potential facial regulatory taking of the property. In this case, it is reasonable to conclude that the property owner was unaware that the lot would be essentially rendered unbuildable under LCP Unit I, Policy IV(30). 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. 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 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 standard single family residence. Consequently, should your Board find that the project, as approved by the Planning Commission, complies with all other applicable policies and zoning regulations, approval of the project could be made taking into consideration the potential regulatory taking that may result from upholding the appeal and denying the application.


REVIEWED BY: (These boxes must be checked)

Department of Finance N/A
 County Counsel N/A
 Human Resources N/A

SIGNATURE:


Jocelyn Drake
Planner

REVIEWED BY:


Brian C. Crawford
Director

ATTACHMENTS

1. Recommended Resolution Denying the Hurley, Lowry, Et Al. Appeal and Conditionally Approving the Heidi Hjorth Coastal Permit
2. Hurley, Lowry, Et Al. Petition for Appeal and attachment, February 17, 2015
3. Len Rifkind Email, 8/25/15
4. Richard S. Kohn letter, dated November 2, 2105

Note: In order to conserve resources, the following documents have been provided only to the Board of Supervisors. These documents are available for public review on line at <http://www.marincounty.org/depts/cd/divisions/planning/projects> and at the Community Development Agency, Planning Division during regular business hours: Monday through Thursday, 8:00 am to 4:00 pm.

5. Minutes from the April 7, 2015 Board of Supervisors hearing.
6. Minutes and approved Resolution PC15-002 from the Planning Commission Hearing on February 9, 2015
7. Planning Commission Memo, January 28, 2015
8. PC Staff Report from the Planning Commission Hearing on October 27, 2014