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January 24, 2017

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

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SUPERVISING DEPUTY

SUBJECT: "Remand" Hearing in *Karuna Land, LLC. v. County of Marin*

Mari-Ann G. Rivers
David L. Zaltsman
Michele Keno
Patrick M. K. Richardson
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Karuna Land LLC., Master Plan, Vesting Tentative Map and Precise
Development Plan

DEPUTIES

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

Dear Supervisors:

RECOMMENDATION: Provide direction to staff on further processing of the development entitlements or completion of litigation.

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SUMMARY: This project on a 10.6 acre parcel first came to your Board from the Planning Commission in August 2009 as a two (2) lot land division with a large remainder parcel. That project contemplated immediate construction two (2) 3,500 square foot single family residences on the created lots and a possible future residence on the remainder parcel. Your Board –following the recommendation of your Planning Commission- denied the applications without environmental or merits review on the ground that the proposal was fundamentally inconsistent with Countywide Plan policies and development regulations. These inconsistencies included siting part of the development in the Ridge and Upland Greenbelt and Stream Conservation Area, as well as utilizing large home designs that were inappropriate for the steep hillside setting. In addition there was a considerable amount of disturbance associated with grading and tree removal. (See attachment A which is a color photograph of the site showing the proposed development sites.)

However, at both the Planning Commission and Board hearings, Community Development staff proposed alternative building sites lower along the hillside that would avoid most, if not all, of the policy inconsistency issues. (See Exhibit "B.") Therefore, when the applicant filed its first lawsuit in late 2009, the undersigned, along with CDA staff began settlement negotiations focused upon finding a viable project design clustered on the lower portions of the property. From the applicant's perspective however, clustering two (2) or three (3) homes lower on the property obviously would not be as economically beneficial as having at least one large home

high on the ridge with stunning views. Therefore, we focused on the possibility of proposing a somewhat greater density of substantially smaller homes to compensate for the loss of the larger hilltop home.

This process finally came to fruition with the applicant's agreement to submit a "conditional alternative plan" for processing as outlined in the June 2012 "Settlement Agreement" between the County and the applicant. (See Exhibit "C.") This new proposal contemplated six (6) 1500 square foot homes clustered at the bottom of the hill below the 170 foot contour adjacent to the already culverted portion of the adjacent creek. (See the reduced plan of the vesting tentative map attached as Exhibit "D.")

As with any major development application, there were many issues beyond the scope of the settlement agreement that came to light during environmental and merits review of the project. However, at the end of your Board's public hearing process, two (2) major issues predominated. First, according to the Arborists report submitted with the application, a 54 inch diameter valley oak tree adjacent to Lot 2 would likely not survive the grading and associated development impacts. The Arborist therefore recommended removing the tree and "mitigating" with new plantings of valley oak. (See Exhibit "E.")

Your Board, however, rejected this recommendation and instead required the applicant to redesign the tentative map to preserve this valley oak.

Second, the applicant was proposing a vesting tentative map as opposed to a standard tentative map. Since a vesting tentative map locks in current development standards in perpetuity, the County's ordinances require that the project receive full "design review" approval at the time the map is approved. (With a standard tentative map, approval only creates the relevant lots and perhaps building envelopes, but design review for the actual homes, if required under the relevant zoning, can proceed separately.)

In this case the applicant only submitted proposed plans for the homes from a lay designer, and therefore the plans did not have the full architectural features normally required for a design review approval. More importantly these limited designs were determined by staff to not meet several of the requirements of the County's single family design guidelines. (See Exhibit "F" which is an excerpt from your Board's findings in this regard.)

Therefore your Board denied the vesting tentative map, which, in turn required denial of the precise development plan. Your Board, however, did approve the Master Plan indicating your Board's general approval of the development concept if the tree and design review issues could be resolved. However, your Board also included several conditions in that approval to which the applicant objected.

The applicant therefore filed a second, separate lawsuit challenging your Board's denial of the vesting tentative map as well as several conditions in the Master Plan. This new lawsuit, in addition to challenging your Board's quasi-legislative and quasi-

judicial actions via a "writ of mandate," also alleged that the County breached the settlement agreement and required a "regulatory taking" of the applicant's property.

The County and the applicant engaged in several days of mediation as well as several days of a mandatory settlement conference, during which several issues were tentatively resolved. However, last August, the writ of mandate cause of action was briefed to the superior court. The court's decision is attached hereto as Exhibit "G." As relevant to today's "remand" hearing, two major and two minor issues need to be addressed by your Board.

First, the applicant, following the filing of the lawsuit, obtained two (2) new arborists reports (including one from the original arborist), that conclude that the valley oak tree your Board was concerned with can now be preserved without amending the tentative map. (See Exhibits "H" and "I.") The Court therefore ordered your Board to reconsider its decision on the vesting tentative map based upon these new reports. With respect to this portion of the order, neither our office, nor CDA have any reason to believe the new arborists reports are correct and that the valley oak can indeed be preserved.

Second, the court interpreted the settlement agreement the County and the applicant entered into as constituting the County's agreement that straw bale construction was pre-approved for this project. Therefore the court ordered your Board to reconsider its findings denying design review in light of the inherent limitations of straw bale design and construction. (See pages 10 and 11 of Exhibit "G.")

However, the County does not have any personnel with particular expertise in straw bale construction and how best to design with straw bale in order to meet the requirements of the single family design guidelines to the extent feasible. Therefore the undersigned retained an architect named David Arkin of Arkin-Tilt architects in Berkeley to assist. His instructions were to update the designs provided by the applicant to best meet the County's single family design guidelines given the limitations inherent in straw bale design. His summary of the changes he made to the designs, proposed design review findings should your Board agree with the court's decision, and the updated plans themselves are attached as Exhibits "J," "K" and "L.")

Finally, as previously noted, the judge also invalidated two of the conditions imposed upon the Master Plan, namely the requirement for a deed disclosure to buyers of the homes of the presence of the active Town of San Anselmo corporation yard adjacent to the property, and the requirement to provide an easement restricting future use of undersized driveway for potential access to new development on the applicants adjacent property. (See page 13 of Exhibit "G.")

BASIS FOR RECOMMENDATION: As discussed above, the basis for today's hearing is the superior court's order "remanding" the issues discussed above to your Board for "reconsideration" in light of the superior court's ruling. As such, the County cannot appeal this ruling at this time. On the other hand, should your Board

determine that it can live with ruling, including the new design review findings, it may be possible to avoid continued litigation and allow the applicant to actually build the proposed project.

Therefore our office is requesting your Board direct our office whether to bring back to your Board an updated Master Plan ordinance and precise development plan/vesting tentative map resolution for possible approval, or reject the court's decision and complete the litigation.

FISCAL/STAFFING IMPACT: N/A

REVIEWED BY:

<input type="checkbox"/>	Auditor-Controller	X	N/A
X	County Counsel	<input type="checkbox"/>	N/A
<input type="checkbox"/>	Human Resources	X	N/A

Respectfully submitted,

BRIAN E. WASHINGTON
County Counsel

By: David Zaltsman, Deputy

cc: CDA