

In light of the absence of project alternatives, denial of the project will result in a regulatory taking of property without just compensation. In *Penn Central Transportation Co. v. New York* (1978) 438 U.S. 104, the United States Supreme Court unequivocally held that just compensation for a taking is appropriate even if the property owner has not been deprived of all economically viable use. In this circumstance a taking can occur based upon *ad hoc* factual inquiries, including the denial of reasonable investment backed expectations and the character of the government's conduct. (*Penn Central Transportation Company v. New York City* (1978) 438 U.S. 104, 117-118.) This has been established law for almost 35 years. California law applies this federal standard regarding the regulatory takings.

Indeed, the United States Supreme Court has called *Penn Central* the "polestar" of its regulatory takings jurisprudence. (*See Palazzolo v. Rhode Island*, 533 U.S. at 633 (O'Connor, J., concurring)) ("Our polestar ... remains the principles set forth in *Penn Central*."

Penn Central requires courts to engage in a fact-intensive, case-by-case inquiry to determine whether the facts proffered at trial suggest the defendant's interference with the plaintiff's lawful use and enjoyment of property require compensation under the Takings Clause. *See Penn Central*, 438 U.S. at 124. *Penn Central* set forth a number of fact-specific "relevant considerations" for courts to examine in a case-by-case determination of takings liability: The economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations. So, too, is the character of the governmental action.

As indicated in the geotechnical report, the proposed site location is essential to ensure stability of the structure, and the property was purchased with the distinct investment backed expectation that the owner has the continuing right to ensure that the home will be safe from potential geotechnical hazards. Not only that, the existing home was already built within the footprint of the proposed project. Denying us this right by forcing the home to be alternatively located under the pretense of avoiding purely hypothetical ESHA impacts will result in a regulatory taking.

Recently, the California Court of Appeal confirmed that a property owner is entitled to just compensation for a regulatory taking, even if there remains alternative economic uses of property. In *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, the court awarded the property owner \$1.5 million in damages for delaying the right to build a storage facility, *even though other economic uses remained*: “The County's decision to deny Lockaway the right to complete its development project did not render the property worthless. The trial court found that some alternative uses, consistent with the terms of Measure D, had calculable commercial value. However, the court also found that Lockaway always intended to develop the property as a storage facility, and requiring it to pursue some different authorized use would have deprived Lockaway of the return on its investment that it “reasonably expected from the intended use.” (*Id.* at 185.)

Similarly here, we purchased the land with the reasonable investment backed expectation that the home would continue to be sited in its location, and that any renovation would not mandate the movement of that house to an alternative location. This is particularly true given the absence of any evidence proffered by the government that the current location is geotechnically unstable.

In sum, if the government wants to deprive the applicants of their investment backed expectations by forcing the home to be built in a different location because of imagined ESHA impacts, it will be required to compensate the owners.

The County's letter requested that we provide certain information for the subject parcel. The information requested is provided in the tables below beginning on page 4.

Table 1 - Surrounding Developments (updated to include approximate construction date)

APN	Address	Owner	Built	Stories	Lot Size AC	Lot Size SF	House SF	Garage SF	Other
121-130-36	5510 N Highway 1	Ulatowski	2001	1	2.5	108,900	1,152	720	covered porches, deck, shed
121-130-35	5510 N Highway 1	Ulatowski	1964/2002	2	7.5	326,700	3,523	725	covered porch, uncovered porch, glass enclosed pool
121-130-27	5520 N Highway 1	Russell	1967	2	2.85	124,146	1,295	0	covered porch, concrete work
121-130-31	5530 N Highway 1	Russell	1946	1	5.2	226,512	2,195	1020	covered porch, uncovered porch, concrete work
121-110-13	5540 N Highway 1	Pounce	1984	2	7.3	317,988	3,788	245	covered porch, studio, guest cottage, pool, shed, solar room
121-110-04	5708 N Highway 1	Roscoe	1973/2008	2	1	43,560	2,481	460	pump house
121-040-31	6002 N Highway 1	Gaudet	1981	2	1	43,560	2,895	600	covered porch, uncovered porch, shed
121-040-16	6010 N Highway 1	Muritsen	1980	1	1	43,560	2,552	504	balcony, uncovered porch
121-040-15	6018 N Highway 1	Wynne	1979	1	1	43,560	2,324	0	uncovered porch
121-040-27	6020 N Highway 1	Grant	1992	2	1.23	53,579	3,187	192	covered and uncovered porches
121-040-14	6024 N Highway 1	Huff	1966	1	1.88	81,893	2,363	450	pump house
121-040-13	6028 N Highway 1	Mitchell	1957	2	0.85	37,026	2,805	0	decks
121-040-12	6030 N Highway 1	Phillips	1964	1	2.1	91,476	2,280	500	sheds, patios
121-040-11	6040 N Highway 1	Gaffey	1976	1	1	43,560	1,409	420	decks, sheds
121-040-34	6056 N Highway 1	Phillips	1983	1	1.25	54,450	1,719	600	decks
121-040-35	6100 N Highway 1	Tappen	1994	2	2.7	117,612	1,525	0	covered porch, sunroom
121-040-30	6150 N Highway 1	Greenberg	1993	2	3.5	152,460	2,887	499	patios
121-040-29	6160 N Highway 1	Greenberg	1953	1	2.5	108,900	1,846	0	patios
121-050-22	6350 N Highway 1	Rice	1967	1	2.6	113,256	1,967	576	patios
121-050-20	6380 N Highway 1	Cartwright	1987	1	2.9	126,324	1,688	250	decks, patio
121-050-19	6400 N Highway 1	Riddle	1972	1	3	130,680	2,989	572	patios, concrete
121-050-18	6500 N Highway 1	Mallory	1920	1	15	653,400	2,623	220	decks, cottage, storage
121-050-17	6600 N Highway 1	Bauccio	2002	2	1.69	73,616	5,368	1221	decks, storage, paving
121-050-16	6630 N Highway 1	Cecil	1948	1	3.4	148,104	2,534	200	decks, walks, bridge
121-050-16	6630 N Highway 1	Kinkle	1955	1	3.4	148,104	1,986	200	decks
121-050-30	6682 N Highway 1	Mills	2002	1	1.3	56,628	2,932	638	decks
121-050-29	6710 N Highway 1	Mills	1932	1	0.9	39,204	1,491	378	patios
121-050-14	6850 N Highway 1	Schuh	1945/1984	2	0.9	39,204	2,117	637	solarium
121-050-06	7020 N Highway 1	Verner	1989	1	14.7	640,332	3,277	774	patios
121-050-05	7020 N Highway 1	Daley	1973	2	2.92	127,195	5,225	1374	deck, pump house, pool
121-050-04	7036 N Highway 1	Keller	1976	1	2.84	123,710	1,952	552	decks
121-050-03	7044 N Highway 1	Hyland	1977	1	3.07	133,729	1,666	588	patios
121-050-02	7052 N Highway 1	Greene	1974	2	3	130,680	2,115	1217	patios, decks, pump house
121-280-09	7090 N Highway 1	Paglia	1979	1	8.1	352,836	2,600	908	decks
121-280-11	7300 N Highway 1	Raymond	1973	1	5.3	230,868	3,267	1044	paving, decks, patios
121-280-07	7330 N Highway 1	Casper	1973	1	3.72	162,043	2,016	576	paving, storage, patio
121-280-06	7350 N Highway 1	Charba	1973	1	6.1	265,716	4,163	660	patios

Table 2 - Expenditures Related to Purchase & Improvement of Parcel at 5720 N. Highway 1

Category	Amount
Parcel Costs	
Purchase Price	\$695,000.00
Closing Costs	\$6,595.00
Interest Expense	\$7,643.00
Lost Interest on Money	\$35,500.00
Taxes	\$12,949.00
Subtotal	\$757,687.00
Architects and Engineers	
Architect	\$8,000.00
Civil Engineer	\$12,574.00
Structural Engineer	\$3,127.00
Geotechnical Engineer	\$12,814.00
Septic Design	\$4,900.00
Subtotal	\$41,415.00
Land Surveys and Studies	
Surveying	\$1,500.00
County property records	\$295.00
Coastal Act Compliance reports	\$19,669.00
Coastal Act Compliance reports (due)	\$2,000.00
Archeology Survey	\$800.00
Planner	\$2,280.00
Subtotal	\$26,544.00
Permit Fees	
Planning Application	\$3,623.00
Subtotal	\$3,623.00
Miscellaneous	
Legal	\$12,500.00
Clean Up Work	\$22,125.00
Shore Pine Trees	\$269.00
Subtotal	\$34,894.00
Expenditures	\$864,163.00

In response to the questions presented in the Coastal Commission's November 7, 2014 letter:

1. *When the property was acquired, and from whom.*

The parcel was purchased on December 4, 2013 from Pinnacle Land Ventures

2. *The purchase price paid for the property.*

\$695,000.00

3. *The fair market value of the property at the time it was acquired and the bases upon which fair market value was derived.*
\$695,000.00; Comparable properties
4. *Whether a general plan, zoning, or similar land use designations applicable to the property changed since the time the property was purchased. If so, identify the particular designation(s) and applicable change(s).*
We are not aware of any general plan, zoning, or similar land use designation changes since the property was purchased.
5. *At the time the property was purchased, or at any subsequent time, whether the project has been subject to any development restriction(s), other than land use designations referred to in the preceding question.*
Declaration of Restrictions; "Owner acknowledges and recognizes that this property is located within the California Coastal Zone and is therefore subject to the rules and regulations of California Coastal Act as well as the Mendocino County Local Coastal Program. Owner further acknowledges that any future development on subject Property shall require a Coastal Development Permit."
6. *Whether the size or use of the property changed in any way since it was purchased.*
No.
7. *Whether a portion of, or interest in, the property was sold or leased since the time the applicants purchased it.*
No.
8. *A copy of any title report, litigation guarantee or similar document that might have been prepared in connection with all or a portion of the property, together with a statement of when the document was prepared and for what purpose.*
A title report was prepared at purchase; a copy is attached.
9. *The approximate date and offered price of any offers to buy all or a portion of the property since the time the applicants purchased the property.*
No offers have been sought or received as of this writing.
10. *The costs associated with ownership of the property on an annualized basis for the last five calendar years.*
See Table 2 above; given the parcel was purchased in December 2013; the expenses represent a twelve month period.
11. *Whether apart from any rent received from leasing all or a portion of the property, current or past use of the property generates any income.*
No.

Section 20.496.020(A)(4)(c) Permitted Development

The County asserts that WRA's June 2014 Coastal Act Compliance Report does not adequately address policy 20.496.020(A)(4)(c). Attached please find WRA's response to this information request. Further, the County requests that we provide alternative analysis that distinguish multiple development alternatives, including at a minimum, a two-story residence with a reduced footprint, the residence in a different location on the parcel, and a "no project" alternative, and (2) analysis by a biologist and an engineer addressing the impacts of each alternative.

In its June 2014 report (page 27), WRA indicated that the proposed development was the least damaging alternative location. This response includes several alternatives evaluated for the parcel; confirming the findings from the June 2014 report. This response also includes a review of the alternatives by Geotechnical Engineers, Brunsing Associates. Further, JR Structural Engineering, the project's Structural Engineer has prepared a letter outlining its foundation basis of design and requirements; the letter is also attached herein.