

COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

DATE: August 4, 2009 at 2:30 p.m.
TO: Board of Supervisors
FROM: Cynthia Demidovich, Planner III
SUBJECT: PLP09-0008, [REDACTED], Certificate of Modification/Zoning Permit Appeal

Action of the Planning Commission:

At its regularly scheduled meeting on March 19, 2009, the Planning Commission reviewed a request by [REDACTED] for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3, Lot 24 by reducing the side yard setback from ten feet to five feet, reducing the front yard setback from 30 feet to 20 feet and enlarging the existing building envelope by 1,985 square feet to construct a 3,000 square foot residence at 5231 Las Flores Road, Bodega Bay: APN 101-240-012; Zoning CC (Coastal Combining District), RR (Rural Residential), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geological Hazard); Supervisorial District No. 5.

The Planning Commission opened the public hearing, and after taking testimony closed the public hearing and continued the deliberation to April 2, 2009, to allow staff to provide the following information to the Planning Commission: 1) Would the Sereno Del Mar Conditions, Covenants and Restrictions (CC&R's) be violated if the Certificate of Modification and the Zoning Permit were approved; 2) Does the County have any obligation to enforce the CC&R's; and 3) Does the scope of the Sereno Del Mar Architectural Control Committee have authority relative to the proposed project.

On April 2, 2009, the Planning Commission, with a 5-0 vote, approved the request for a Certificate of Modification and a Zoning Permit.

On April 10, 2009, an appeal of the decision was filed with the Board of Supervisors by the Sereno Del Mar Architectural Control Committee.

ISSUES DISCUSSED AT THE PUBLIC HEARING

Issue #1: Sereno Del Mar CC&R's

Discussion

County Counsel determined that if the Certificate of Modification was approved and a reduction in the side yard setbacks granted, the Sereno Del Mar CC&R's would not be violated. County Counsel determined that it is unclear whether the requested reduction of the front yard setback

is permissible under the CC&R's. Final interpretation of the CC&R's is a matter best left to the residents of Sereno Del Mar, however, the County approved the map and established the setbacks and retains the authority to independently modify them under State law and the Sonoma County Code. County Counsel determined that the County does not have the obligation to enforce the Sereno Del Mar CC&R's.

Resolution

The Planning Commission did not have any additional comments on this issue.

Issue #2: Sereno Del Mar Architectural Control Committee Authority

Discussion

County Counsel determined that the Sereno Del Mar Architectural Control Committee is authorized to review an application for quality of workmanship and materials, harmony of external design and exterior schemes and location with respect to topography and finished grading elevations. The CC&R's also authorize the Architectural Control Committee to approve variances from the 16 foot height limit. County Counsel found nothing that authorized the Architectural Control Committee to review requests for reduction in setbacks. In this case, they did review the request for reductions in setbacks and they previously submitted a letter of approval to the applicant.

Resolution

The Planning Commission did not have any additional comments on this issue.

Issue #3: Private Views

Discussion

According to the Subdivision Map Act the Planning Commission must make a finding that the Certificate of Modification does not alter "any right, title or interest in the real property reflected on the recorded map."

County Counsel has determined that absent a view easement, the neighbors do not have a legal right to an unobstructed view, nor does the view constitute an "interest in real property." On this record, the Planning Commission has discretion to make the required finding. The Sereno Del Mar subdivision has no view easements recorded as a part of the subdivision map.

Resolution

The Planning Commission did not have any additional comments on this issue.

ISSUES RAISED WITH APPEAL

Issue #1: Encroachment into Utility Easement and Drainage Easement

The appellant is concerned that in reducing the front yard setback and side yard setback that the proposed project will encroach into the utility easement and drainage easement.

There is an existing five foot utility easement located at the front of the existing parcel. Reducing the front yard setback from 30 feet to 25 feet will not cause the proposed structure to encroach into the existing utility easement. Reducing the side yard setback from ten feet to five feet will not cause the proposed structure to encroach into the drainage easement located adjacent to the west parcel boundary line. The proposed building envelope is five feet from the existing drainage easement.

Issue #2: Views

The appellant is concerned that existing private views will be affected if the Certificate of Modification and reduced setbacks is approved.

As previously stated, County Counsel has determined that absent a view easement, the neighboring property owners do not have a legal right to an unobstructed view, nor does the view constitute an "interest in real property."

Issue #3: Construct Smaller Structure

The appellant is requesting that the applicant construct a small single family dwelling on the parcel.

Single family dwellings constructed in Sereno Del Mar during the 1970's and 1980's range in size from 848 square feet to 1,800 square feet and some were considered vacation homes. The average size of single family dwellings constructed from the year 2000 to 2007 in Sereno Del Mar is approximately 2,323 square feet in size and five of these homes range in size from 2,718 to 3,164 square feet in size. The applicant is proposing to construct a future 3,000 square foot single family dwelling which is in conformance with the current community character of Sereno Del Mar. Construction on the site is constrained as the septic system must be located on the rear portion of the parcel and this pushes the location of the single family dwelling to the front of the site.

List of Attachments:

- Draft Board of Supervisors Resolution
- EXHIBIT A: Draft Conditions of Approval
- EXHIBIT B: Appeal Form
- EXHIBIT C: Letter of Support
- EXHIBIT D: Letters from applicant dates May 26, June 22, and July 18, 2009
- EXHIBIT E: Planning Commission Minutes dated March 19, 2009
- EXHIBIT F: Planning Commission Staff Report dated March 19, 2009
- EXHIBIT G: Planning Commission Resolution No. 09-010
- EXHIBIT H: Planning Commission Minutes dated April 2, 2009

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EXHIBIT I: Planning Commission Memo dated April 2, 2009

Resolution Number

County of Sonoma
Santa Rosa, California

August 4, 2009
PLP09-0008 Cynthia Demidovich

RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, DENYING THE APPEAL, THEREBY APPROVING THE REQUEST BY [REDACTED] [REDACTED] FOR A CERTIFICATE OF MODIFICATION AND A ZONING PERMIT TO ENLARGE THE BUILDING ENVELOPE AND REDUCE STRUCTURAL SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 5321 LAS FLORES ROAD, BODEGA BAY; APN 101-240-012.

WHEREAS, the applicant, [REDACTED] filed an application with the Sonoma County Permit and Resource Management Department for Request for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 by reducing the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet and enlarge the existing building envelope by 1,985 square feet to construct a new residence on 0.44 acres located at 5321 Las Flores Road, Bodega Bay, APN 101-240-012, Zoned: RR (Rural Residential), CC (Coastal Combining), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geologic Hazard Combining); Supervisorial District 5; and

WHEREAS, this project has been found to be categorically exempt from CEQA guidelines per section 15305(a) "Minor alterations in land use limitations;" and

WHEREAS, in accordance with the provisions of law, the Planning Commission held a public hearing on March 19, 2009, at which time all interested persons were given an opportunity to be heard and the Planning Commission closed the public hearing and continued the deliberation to April 2, 2009 to allow staff to provide the following information: 1) Would the Sereno Del Mar Conditions, Covenants and Restrictions (CC&R's) be violated if the Certificate of Modification and the Zoning Permit were approved; 2) Does the County have any obligation to enforce the CC&R's; and 3) Does the scope of the Sereno Del Mar Architectural Control Committee have authority relative to the proposed project; and

WHEREAS, at its regularly scheduled meeting on April 2, 2009, the Planning Commission, continued with its deliberations and approved the request; and

WHEREAS, on April 10, 2009, an appeal of that decision was filed by the Sereno Del Mar Architectural Control Committee; and

WHEREAS, in accordance with the provisions of law, the Board of Supervisors held a public hearing on August 4, 2009, at which time all interested persons were given an opportunity to be heard and

NOW THEREFORE IT BE RESOLVED that the Board of Supervisors makes the following findings:

1. The Certificate of Modification to expand the existing building envelope on Lot 24 of Sereno Del Mar subdivision is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope. The modification to the existing building envelope is consistent with the site's RR (Rural Residential) General Plan Land Use designation.

2. The Certificate of Modification to expand the existing building envelope is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope presenting unique and significant constraints on the development of a residence on the subject lot. The modification to the existing building envelope is consistent with the intent of the site's CC (Coastal Combining) and RR (Rural Residential) zoning designation.
3. The reduction in the front yard setback from 30 feet to 20 feet and the side yard setback from ten feet to five feet is consistent with the "General Yard Regulations and Exceptions" of the Coastal Zoning Ordinance (Section 26C-323(g)), and Section 26C-90(a) RR (Rural Residential) zoning district.
4. Given the unique and significant development constraints imposed on the subject site lot by current septic requirements, strict compliance with the RR (Rural Residential) zoning district setback standards would deny the owners the reasonable use of their property.
5. The reduction in the front and side yard setbacks do not negatively impact the adjacent neighboring properties because the parcel located to the west (Lot 23) is separated from the project site by a 20 foot drainage easement and the 20 foot drainage easement provides a buffer from the proposed project. The residence located to the east (Lot 25) is up hill from the proposed project and approximately 123 feet from the easterly modified side yard setback. The residence located to the northeast (Lot 26) is up hill from the proposed project and approximately 219 feet from the reduced front yard setback and approximately 205 feet from the modified east side yard setback. The reduction in setbacks does not affect the privacy of the adjacent parcels.
6. In accordance with Section 66472.1 of the Subdivision Map Act, the following findings are made:
 - a. There are changes in circumstances related to Lot 24 of the Sereno Del Mar Subdivision Map Unit 3 in that due to site constraints, the approved vested septic system is located partially inside of the designated building envelope and the leachfield is located on the rear portion of the parcel leaving a limited area to construct a reasonably sized single family dwelling.
 - b. The modifications do not impose any additional burden on the present fee owner of the property.
 - c. The modifications do not alter any right, title or interest in the real property reflected on the recorded map.
 - d. The map, as modified, conforms to all the provisions of the Subdivision Map Act and local implementing ordinances.
7. Based upon the information contained in the project file, it has been determined that the project is categorical exempt from CEQA per Section 15305(a), as this is a minor alteration in land use limitations.
8. The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area.

Resolution #
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BE IT FURTHER RESOLVED that the Board of Supervisors denies the appeal, thereby granting the requested Certificate of Modification and Zoning Permit to relocate the Building Envelope and reduce structural setback requirements subject to the Conditions of Approval in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

SUPERVISORS VOTE:

Brown: Kerns: Zane: Carrillo: Kelley:

 Ayes: Noes: Absent: Abstain:

SO ORDERED.

SONOMA COUNTY BOARD OF SUPERVISORS

Exhibit A Draft Conditions of Approval

Time: 2:30 p.m. **Date:** August 4, 2009
Staff: Cynthia Demidovich **File No.:** PLP09-0008
Applicant: [REDACTED] **APN:** 101-240-012
Address: 5321 Las Flores Road, Bodega Bay, Lot 24 -Sereno Del Mar Unit 3

Project Description: Request for a Certificate of Modification and Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 to reduce the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet, and enlarge the existing building envelope by 1,985 square feet.

SURVEYOR:

1. An Amended Map or Certificate of Modification prepared by a Licensed Land Surveyor or someone authorized to practice land surveying, shall be submitted to the County Surveyor within one (1) year after date of approval. It shall be accompanied by a current (within 3 months) Title Report showing proof of ownership and documentation listing those with a record title interest in the property. Upon recording the Amended Map or Certificate of Modification the original map will be deemed to have been modified.
2. Any one with a record title interest in the property shall sign the following statement on the map or certificate consenting to the preparation and recording of said map or certificate. Signatures need to be acknowledged by a Notary Public.

"I (We) have an interest in the property reflected on this Certificate of Modification and hereby consent to the preparation and recordation of this document."

PLANNING:

3. The reduction in the front yard setback from 30 feet to 20 feet and the reduction to both side yard setbacks from ten feet to five feet is approved.
4. The building envelope modification is approved as proposed.
5. An approved Coastal Permit is required prior to issuance of the grading, building and septic permits for the construction of a single family dwelling, garage, and septic system.
6. If the applicant requests a building height over 16 feet, the applicant shall submit a letter of approval from the Sereno Del Mar Architectural Control Committee for an exception to the 16 foot height limit to the Project Planner prior to submittal of a building permit application. If approval of the Sereno Del Mar Architectural Control Committee is not obtained, the maximum building height shall be 16 feet.

Sonoma County Planning Commission Minutes

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

Date: **March 19, 2009**
Meeting No.: **09-004**

ROLL CALL

Commissioners

Marcel Feibusch
Komron Shahhosseini
Lisa Schaffner
Pamela Davis
Dick Fogg, Chair

Staff Members

Jennifer Barrett
Cynthia Demidovich
Jane Riley
Sue Gallagher, Deputy County Counsel

1:00 PM Call to order

Approval of Minutes - None

Public Appearances: **Wayne Clark, Petaluma**, complained that the County is not cooperating with the City of Petaluma with reference to the Dutra asphalt plant. Supervisor Kerns has not been going to local meetings, and has neglected his duties as a Supervisor. Clark called Kerns a lackey of the Board of Supervisors and said he has purposefully isolated himself.

Lloyd Guccioni, said that the venue for today's meeting should have been held in the community of Guerneville where the affected people live. The 5th District Supervisor was requested to move meeting to Guerneville, but he did not agree to do so. Commissioner Fogg asked to have this topic put on a 5th Thursday agenda.

REGULAR CALENDAR

Item No. 1	Time: 1:05 pm	File: PLP09-0008
Applicant:	[REDACTED]	Staff: Cynthia Demidovich
Env. Doc.:	Categorical Exemption	
Proposal:	Request for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 single family residential subdivision by reducing the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet and increase the existing building envelope of Lot 24 for a total of 1,985 square feet.	
Location:	5231 Las Flores Road, Bodega Bay	
APN:	101 240 012	Supervisory District: 5
Zoning:	RR (Rural Residential), CC (Coastal Combining), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geologic Hazard Combining)	

Cynthia Demidovich summarized the staff report, which is incorporated herein by reference.

Questions from Commissioners: **Commissioner Davis** visited the site, and confirmed with **Staff Demidovich** that the purpose for the change is due to the relocation of the septic system. **Commissioner Davis** asked what size the other homes were in the area, and **Staff Demidovich** said that the older homes run around 1500 square feet, and from 2000-2007 the size increased dramatically along with property values to around 2,500 square feet. There are a couple of homes in the subdivision that are up to 3,400 square feet. **Commissioner Davis** asked whether the house extended out of the building envelope, and **Staff Demidovich** said that the deck as shown currently does, which will have to be modified because the overall footprint because can't extend outside the building envelope. **Commissioner Fogg** stated that he had also visited the site.

Public Hearing Opened: 1:30

Speakers: **Rick Kadello**, Kadello and Larson, represents clients. They attempted to move the septic system, but were limited by the building envelope and the size of the lot, which is the reason for the request for the CMO for reduced setbacks. Bagai originally wanted a two story house, but this conflicted with height restrictions. The applicant had met with the community and the Architectural Committee and the plans were approved. It was only later that letters of concern came in. One concern is that the house is too large for the community, but Kadello claimed that homes have gotten larger in the coastal area. Another person claimed that the home would block their view, but Kadello stated that the home's location will not block their ocean views. Kadello acknowledged that the lot is difficult to work with.

Rob Gee, neighbor, lives across the street, and claimed that the project will impact his view. An engineer and general contractor, Gee is concerned about change in easement sizes. Other neighbors will be impacted who did not write letters. Gee passed out photo simulations showing story poles, and opposed the reduced setbacks. At one time, Gee and his wife had an offer in on the subject property.

Margaret Briare, neighbor, is one of the original owners in the subdivision. Briare claims there are errors in the staff report. The original CC&R's called for view corridors, and those areas were not intended to be leach fields. Building areas were designed to provide view corridors for the lots. Briare claimed there were utilities located in the 25' utility easement. Briare said that a smaller home would be more appropriate for the lot, and that Bagai was aware of the constrictions of the lot prior to purchasing it. Briare asked the Commission to adhere to the subdivision's CC&R's.

██████████ applicant, said he was stunned at today's testimony, as he has been working closely with the neighbors for the last two years. The building footprint and reduced setbacks were approved in November by the Architectural Committee, and Bagai was astounded that they are against it now. Bagai claimed that Harold Scaggs OK's the plans for the house, and claimed that the Gee's have a 3,300 square foot home plus a 570 square foot garage.

Sandy Gee, neighbor, is familiar with the lot. Her house does not obstruct any views to the ocean. Bagai's proposed house is not within the building envelope, and he was aware of the difficulty of the lot size while still in escrow.

John Cooley, Bodega Bay building contractor, has worked on the coast 25 years. Cooley stated that Bagai tried to work with the community. Cooley was stunned about the comments, and claimed that the project is very buildable. Bagai made every effort to comply with the design review guidelines and the CC&R's.

Kadello, on rebuttal, stated that if they could move the house moved forward ten feet, they could build higher. His client worked in good faith with the neighbors and now they are trying to reverse the approval, because of third party interference.

Commissioner Feibusch asked for more information about the utility easement, Deputy Director Barrett stated that the public utility easement as shown on the map is five feet, not 25 feet.

Commissioner Davis asked for clarification about the average height, and Kadello stated that the highest ridgeline is under 16 feet. **Commissioner Davis** asked if the deck will be modified to be located within the building envelope, and Kadello stated that it would.

Commissioner Fogg asked if the proposal violates the Sereno del Mar CC&R's, and Kadello claimed that the Certificate of Modification and Zoning Permit is required to make the project compliant.

Public Hearing Closed: 2:20

Commission Discussion: Commissioner Davis verified that Harold Scaggs signed off on the reduced setbacks original site plan.

Commissioner Fogg acknowledged that the building area can't be excavated to lower the roofline of the house, and the project can't violate the CC&R's of the subdivision. **Deputy Director Barrett** said that a letter of approval was on file from the Sereno del Mar Architectural Committee. She was not aware that this letter had been revoked, and no correspondence had been received stating thus.

Commissioner Shahhosseini stated that the letter dated July 30 reflects the most current footprint. Briare claimed that the public utility easement was 25 feet, and there is also a riparian creek area at the southern end of the lot, which would restrict the septic system and thus the size of the house that can be built. The house as shown is too large for the lot.

Commissioner Fogg asked if Briare was speaking for the Architectural Committee, and Briare claimed that the current Certificate of Modification was not part of the original approval. **Staff Demidovich** stated that in terms of what the applicant submitted to PRMD, he signed that the application materials were true and correct. These are the same materials that were included in the staff report. **Demidovich** is unaware of any discrepancy. Briare claimed they never received a referral, but **Demidovich** verified that a referral was sent to the Sereno del Mar Architectural Committee by looking in the file.

Commissioner Davis asked for clarification about the CCR's. Counsel Gallager said that it is not the County's job to enforce CC&R's. **Commissioner Davis** was concerned about possible precedent setting by reducing setbacks, and acknowledged that views in the coastal area are an emotional issue. She was concerned about the size of the project, and stated that she is not clear about how the CC&R's play into the scenario. **Commissioner Davis** made a motion to continue to hearing to give staff time to bring back a copy of the CC&R's to make sure that the County is not approving a project that would violate the CC&R's.

Action: Continued to April 2, 2009 at 1:10 p.m.
Resolution No.:

Fogg: aye
Feibusch: S/aye
Shahhosseini: aye
Schaffner: aye
Davis: M/aye

Vote: ayes 5 noes 0 abstain 0 absent 0

Sonoma County Planning Commission S T A F F R E P O R T

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

FILE: PLP09-0008
DATE: March 19, 2009
TIME: 1:05 p.m.
STAFF: Cynthia Demidovich

Appeal Period: 10 calendar days to appeal the decision to the Board of Supervisors. The Board of Supervisors decision is appealable to the Coastal Commission, if filed within 10 working days of the Coastal Commission's receipt of the County's Notice of Final Action.

SUMMARY

Applicant: [REDACTED]

Location: 5321 Las Flores Road, Bodega Bay
APN 101-240-012 Supervisorial District No. 5

Subject: Certificate of Modification

PROPOSAL: Request for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 by reducing the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet and increase the existing building envelope of Lot 24 for a total of 1,985 square feet.

Environmental Determination: Categorical Exemption Section 15305(a), a minor alteration in land use limitations

General Plan: RR (Rural Residential), 2 acre density

Specific/Area Plan: Local Coastal Plan
Land Use:

Ord. Reference: Section 25-13 (b) (Sonoma County Subdivision Ordinance), Section 26C-323(g) (Coastal Zoning Ordinance)

Zoning: CC (Coastal Combining District), RR (Rural Residential), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geological Hazard)

Application Complete for Processing: December 19, 2008

RECOMMENDATION: Approve the Certificate of Modification and the Zoning Permit, subject to the conditions in Exhibit "A"

ANALYSIS

Background:

The project site includes Lot 24 of the Sereno Del Mar Subdivision Unit 3 which was recorded March 2, 1972. The building envelopes on this map were created based on the location of the proposed leachfields. Since the building envelope located on the recorded map establishes a ten-foot side yard setback and 30-foot front yard setbacks a Certificate of Modification and a Zoning Permit is required to

reduce the setbacks. On June 17, 2008, the applicant applied for a Zoning Permit to reduce the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet. The application for the Zoning Permit included the adjacent property owner's signature's approving the reduction in setbacks. On August 11, 2008, the applicant applied for a Certificate of Modification to reduce the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet, and increase a portion of the building envelope located on the north west portion of the existing parcel. The design of the septic system was approved and vested on November 16, 2006, by the Well and Septic Division. On February 26, 2009, the Permit and Resource Management Department receive two letters from concerned neighbors.

Project Description:

The applicant is requesting to modify the Final Map of Sereno Del Mar Unit 3 by reducing the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet and increase the existing building envelope of Lot 24 for a total of 1,985 square feet. The project site is currently vacant and the applicant is proposing to construct a 3,000 square foot single family dwelling and a 500 square foot garage in the future. The future development includes appurtenant utility connections and development of a two bedroom septic system with a 100% expansion area. The proposed septic system will occupy a large portion of the project site leaving a very limited area to construct a residence given the existing dimensions of the building envelope, the required front yard, side yard and septic setback requirements. The Sereno Del Mar Architectural Control Committee (correspondence dated July 30, 2008) supports the proposed modification to the existing building envelope. A Coastal Permit is required for the future construction of the single family dwelling and septic system.

Site Characteristics:

The project site is approximately 19,500 square feet in size and is relatively flat and consists of fallow grassland. Access to the site is located to the east on Las Flores Road. The site is currently vacant and the applicant proposes to construct a single family dwelling in the future. The site will be served by public water and a private septic system. There are no riparian habitats or wetlands located on or adjacent to the project site.

Surrounding Land Use and Zoning:

The parcels located to the north, south and west are zoned CC (Coastal Combining District), RR (Rural Residential), B7 (Frozen Lot Size), G (Geological Hazard) and Z (Second Dwelling Unit Exclusion). These parcels are vacant or developed with single family dwellings which is consistent with the Rural Residential General Plan land use designations.

DISCUSSION OF ISSUES

Issue #1: General Plan Consistency

The project site is designated as RR (Rural Residential), with a 2 acre density in the General Plan. The proposed building envelope modification and the construction of a future single family dwelling are consistent with the Rural Residential land use designation.

Issue #2: Coastal Zoning Ordinance Consistency

Structural setback requirements for the RR (Rural Residential) zoning district in the Coastal Combining Zoning District are: 30 feet for the front yard, 10 feet for the side yard, and 20 feet for the rear yard. The Zoning Code building height in the Sereno del Mar subdivision is 16 feet unless the Architectural Control Committee approves a greater height (up to 24 feet). Section 26C-323(g) of the Coastal Zoning Ordinance allows a reduction in setbacks if the reductions are appropriated in light of topography, vegetation, or unique physical characteristics. The project site has a unique physical characteristic in that the septic system is partially located inside of the building envelope and the leachfield is located on the rear portion of the parcel. This portion of the site is the only location where the septic system can meet the current County requirements for waste disposal systems. The placement of the septic system also

dictates the design of the floor plan for the future single family dwelling. Approximately 2,230 square feet of the building envelope will be lost to the placement of the septic system. The applicant is requesting an increase of 1,985 square feet to the building envelope which is 245 square feet smaller than the area taken up by the septic system. This leaves a limited area at the front of the parcel to construct a future single family dwelling.

Single family dwellings constructed in Sereno del Mar during the 1970's and 1980's ranged in size from 848 square feet to 1,800 square feet in size and some were considered vacation homes. The average size of single family dwellings constructed from the year 2000 to 2007 in Sereno del Mar is approximately 2,323 square feet in size and five of these homes range in size from 2,718 to 3,164 square feet. The applicant is proposing to construct a future 3,000 square foot single family dwelling which is in conformance with the current community character of Sereno del Mar.

The parcel located to the west is developed with a single family dwelling and is separated from the project site by a 20' drainage easement. The 20' drainage easement provides a buffer from the proposed project to the existing structure on the adjacent parcel. The residence located to the east (Lot 25) is up hill from the proposed project and approximately 123 feet from the required side yard setback. The reduction in setbacks does not affect the privacy of the adjacent parcels and will not affect a view as the proposed single family dwelling will not exceed the 16 foot height limit. It is appropriate to reduce the front yard setback to from 30 feet to 20 feet and the side yard setback from ten feet to five feet and enlarge the building envelope for a total of 1,985 square feet as the reduction will not create any on-site or off-site impacts.

Issue #3: California Subdivision Map Act

In order to amend a recorded map, the Planning Commission must make certain findings, as required by Section 66472.1 of the Subdivision Map Act. The findings include:

- a. That there are changes in circumstances which make any of all of the conditions of such map no longer appropriate or necessary; and
- b. That the modifications do not impose any additional burden on the present fee owner of the property; and
- c. That the modifications do not alter any right, title or interest in the real property reflected on the recorded map; and
- d. That the map as modified conforms to all the provisions of the Subdivision Map Act and local implementing ordinances.

The change in circumstances in this case relates to the location of the septic system which is partially inside of the designated building envelope and the leachfield is located on the rear portion of the parcel leaving a limited area to construct a single family dwelling. This location is the only area where the septic system can meet the current County requirements for waste disposal systems. When the map was recorded, building envelopes were established for the placement of residences on each subdivision parcel. The intent was to locate the leachfields outside of the building envelopes. There will be no adverse impacts to adjacent properties or the environment as this is a minor alteration in land use limitations. It is appropriate to modify the building envelope to allow for the future construction of a single family dwelling.

The proposed modifications will not impose any additional burden on the present fee owner of the property or alter any right, title or interest. Further, the relocation of the building envelope conforms to the Map Act and local ordinances in that the site has been determined to be suitable for the proposed development and the public hearing process will conform to all noticing requirements.

STAFF RECOMMENDATION

Approve the requested Certificate of Modification to modify the existing building envelope subject to conditions in Exhibit "A".

FINDINGS FOR RECOMMENDED ACTION

1. The Certificate of Modification to expand the existing building envelope on Lot 24 of Sereno Del mar subdivision is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope. The modification to the existing building envelope is consistent with the sites's RR (Rural Residential) General Plan designation.
2. The Certificate of Modification to expand the existing building envelope is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope. The modification to the existing building envelope is consistent with the intent of the sites's CC (Coastal Combining) and RR (Rural Residential) zoning districts.
3. The reduction in the front yard setback to from 30 feet to 20 feet and the side yard setback from ten feet to five feet is consistent with the CC (Coastal Combining) section 26C-323(g) general yard regulations and exceptions, and section 26C-90(a) RR (Rural Residential) zoning districts.
4. The reduction in the front yard and side yard setbacks do not negatively impact the adjacent neighboring properties because the parcel located to the west (Lot 23) is separated from the project site by a 20' drainage easement and the 20' drainage easement provides a buffer from the proposed project. The residence located to the east (Lot 25) is up hill from the proposed project and approximately 123 feet from the modification to the side yard setback. The reduction in setbacks does not affect the privacy of the adjacent parcels and will not affect a view as the proposed single family dwelling will not exceed the 16 foot height limit.
5. In accordance with Section 66472.1 of the Subdivision Map Act, the following findings are made:
 - a. That there are changes in circumstances related to Lot 24 of the Sereno Del Mar Subdivision Map Unit 3 in that due to site constraints, the approved vested septic system is located partially inside of the designated building envelope and the leachfield is located on the rear portion of the parcel leaving a limited area to construct a reasonably sized single family dwelling: and
 - b. That the modifications do not impose any additional burden on the present fee owner of the property; and
 - c. That the modifications do not alter any right, title or interest in the real property reflected on the recorded map; and
 - d. That the map as modified conforms to all the provisions of the Subdivision Map Act and local implementing ordinances.
6. Based upon the information contained in the project file, it has been determined that the project is categorical exempt from CEQA per Section 15305(a), as this is a minor alteration in land use limitations.
7. The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area.

LIST OF ATTACHMENTS

- EXHIBIT A: Draft Conditions of Approval
- EXHIBIT B: Proposal Statement
- EXHIBIT C: Sereno Del Mar Architectural Control Committee Approval Letter, dated July 30, 2008
- EXHIBIT D: Letters of Concern (2)
- EXHIBIT E: General Plan Land Use Map
- EXHIBIT F: Vicinity Map
- EXHIBIT G: Zoning Map
- EXHIBIT H: Site Plan
- EXHIBIT I: Certificate of Correction Map
- EXHIBIT J: Sereno Del Mar Subdivision Map
- EXHIBIT K: Photos (3)
- EXHIBIT L: Draft Resolution

Separate Attachment for Commissioners: Full Size Maps

Resolution Number

County of Sonoma
Santa Rosa, California

March 19, 2009
PLP09-0008 Cynthia Demidovich

RESOLUTION OF THE PLANNING COMMISSION, COUNTY OF SONOMA, STATE OF CALIFORNIA, APPROVING THE REQUEST BY [REDACTED] FOR A CERTIFICATE OF MODIFICATION TO MODIFY/RELOCATE THE BUILDING ENVELOPE AND REDUCE STRUCTURAL SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 5321 LAS FLORES ROAD, BODEGA BAY; APN 101-240-012.

WHEREAS, the applicant, [REDACTED] filed an application with the Sonoma County Permit and Resource Management Department for a Certificate of Modification to relocate a building envelope on 0.44 acres located at 5321 Las Flores Road, Bodega Bay, APN 101-240-012, Zoned: RR (Rural Residential), CC (Coastal Combining), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geologic Hazard Combining); Supervisorial District 5; and

WHEREAS, this project has been found to be categorically exempt from CEQA guidelines per section 15305(a), and

WHEREAS, in accordance with the provisions of law, the Planning Commission held a public hearing on March 19, 2009, at which time all interested persons were given an opportunity to be heard.

NOW THEREFORE IT BE RESOLVED that the Planning Commission makes the following findings:

1. The Certificate of Modification to expand the existing building envelope on Lot 24 of Sereno Del Mar subdivision is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope. The modification to the existing building envelope is consistent with the sites's RR (Rural Residential) General Plan designation.
2. The Certificate of Modification to expand the existing building envelope is necessary to accommodate a reasonably sized single family residence due to the location of an approved septic system that encroaches into the existing building envelope. The modification to the existing building envelope is consistent with the intent of the sites's CC (Coastal Combining) and RR (Rural Residential) zoning districts.
3. The reduction in the front yard setback to from 30 feet to 20 feet and the side yard setback from ten feet to five feet is consistent with the CC (Coastal Combining) section 26C-323(g) general yard regulations and exceptions, and section 26C-90(a) RR (Rural Residential) zoning districts.
4. The reduction in the front yard and side yard setbacks do not negatively impact the adjacent neighboring properties because the parcel located to the west (Lot 23) is separated from the project site by a 20' drainage easement and the 20' drainage easement provides a buffer from the proposed project. The residence located to the east (Lot 25) is up hill from the proposed project and approximately 123 feet from the modification to the side yard setback. The reduction in setbacks does not affect the privacy of the adjacent parcels and will not affect a view as the proposed single family dwelling will not exceed the 16 foot height limit.

5. In accordance with Section 66472.1 of the Subdivision Map Act, the following findings are made:
 - a. That there are changes in circumstances related to Lot 24 of the Sereno Del Mar Subdivision Map Unit 3 in that due to site constraints, the approved vested septic system is located partially inside of the designated building envelope and the leachfield is located on the rear portion of the parcel leaving a limited area to construct a reasonably sized single family dwelling; and
 - b. That the modifications do not impose any additional burden on the present fee owner of the property; and
 - c. That the modifications do not alter any right, title or interest in the real property reflected on the recorded map; and
 - d. That the map as modified conforms to all the provisions of the Subdivision Map Act and local implementing ordinances.
6. Based upon the information contained in the project file, it has been determined that the project is categorical exempt from CEQA per Section 15305(a), as this is a minor alteration in land use limitations.
7. The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area.

BE IT FURTHER RESOLVED that the Planning Commission grants the requested Certificate of Modification, and a reduction in structural setback requirements subject to the Conditions of Approval in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, California 95403.

BE IT FURTHER RESOLVED that the Planning Commission's action shall be final on the 11th day after the date of this Resolution unless an appeal is taken.

Resolution #
March 19, 2009
Page 3

THE FOREGOING RESOLUTION was introduced by Commissioner _____, who moved its adoption, seconded by Commissioner _____, and adopted on roll call by the following vote:

Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing resolution duly adopted; and

SO ORDERED.

Sonoma County Planning Commission MINUTES

Sonoma County Permit and Resource Management Department
2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

Date: **April 2, 2009**
Meeting No.: **09-005**

ROLL CALL

Commissioners

Marcel Feibusch
Tom Lynch, Items 1-3
Pamela Davis, Item 4
Komron Shahhosseini
Lisa Schaffner
Dick Fogg, Chair

Staff Members

Jennifer Barrett, Deputy Director
Dean Parsons
Scott Hunsperger
Cynthia Demidovich
Sue Gallagher, Deputy County Counsel

1:00 PM **Call to order**
 Minutes approved - None
 Public Appearances - None

REGULAR CALENDAR

Item No. 4	Time: 1:10 pm	File: PLP09-0008
Applicant:	[REDACTED]	Staff: Cynthia Demidovich
Con't From:	March 19, 2009	
Env. Doc.:	Categorical Exemption	
Proposal:	Request for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 single family residential subdivision by reducing the side yard setback from ten feet to five feet, reduce the front yard setback from 30 feet to 20 feet and increase the existing building envelope of Lot 24 for a total of 1,985 square feet.	
Location:	5231 Las Flores Road, Bodega Bay	
APN:	101 240 012	Supervisory District: 5
Zoning:	RR (Rural Residential), CC (Coastal Combining), B7 (Frozen Lot Size), Z (Second Dwelling Unit Exclusion), G (Geologic Hazard Combining)	

Cynthia Demidovich summarized the written staff report, incorporated herein by reference, and also passed out additional language incorporated into the Conditions of Approval and Findings by separate memo placed on the dais. Letters from Rob and Sandy Gee and the Sereno del Mar

Architectural Committee were included.

Staff Demidovich clarified that the hearing on March 19th was continued in order for staff to provide explanations about whether the Sereno del Mar's CC&R's will be violated if the subdivision is approved, whether the County is obligated to enforce the Sereno del Mar CC&R's, and whether the Architectural Control Committee has the scope relative to the project. The public hearing was closed on March 19th.

Staff Demidovich stated that Counsel determined, should the Certificate of Modification be approved, that a reduction in side yard set backs would not violate the CC&R's. Additionally, regarding front yard setbacks, Counsel found the CC&R's to be unclear and open to interpretation. Counsel's opinion is that the final interpretation should be left to the residents of Sereno del Mar. The County approved the final subdivision map that established the setbacks, and the County retains the authority to independently modify them under State law and County Code. The County does not have the power to enforce the CC&R's, and has a long standing policy not to engage in interpretations or enforcement of private agreements.

The CC&R's authorize the Architectural Control Committee to look at the quality of workmanship and materials, the design harmony such as color and exterior schemes, and the location with respect to topography and the finished grade. The Sereno del Mar Architectural Control Committee also has the authority to approve a height greater than 16 feet. County Counsel advised staff that they found nothing that expressly authorizes the Architectural Control Committee to review requests for reductions in setbacks. In this case, they did review the request for reductions in setbacks and they submitted a letter of approval to Mr. Bagai.

On the subject of private views, **Staff Demidovich** stated that the Subdivision Map Act requires that the Planning Commission make a finding that a Certificate of Modification does not alter any right, title, or interest on the real property on the recorded map. Counsel has determined that in the absence of a view easement, the neighbors do not have a legal right to an unobstructed view. On this record, the Planning Commission has the discretion to make the required finding. **Staff Demidovich** showed the location of the Gee's home on the aerial photo and referred to a photo taken from the Gee's residence that showed story poles and the height in proximity to the Gee's home, adding that the Planning Commission and PRMD have approved many large homes in the same subdivision, made findings for reduced setbacks, and allowed reduction in front yard setbacks in other areas on the coast.

Questions from Commissioners: Commissioner Fogg asked Counsel to comment on the letter dated March 31 from the Architectural Control Committee. **Counsel Gallagher** stated that there was nothing in the letter that changed her legal conclusions about the County's role or CC&R's interpretation. Enforcement of CC&R's is a private matter not within the purview of the Planning Commission. **Counsel Gallagher** stated that the letter concurred with this in many respects and the Architectural Control Committee does not want the County interfering with reference to the CC&R's.

Commissioner Davis asked if all the commissioners received the letters from Gee and Briar, and it was confirmed that they in fact did. **Staff Demidovich** stated that she had read the letters and had no additional comment. **Commissioner Davis** made a motion to approve the staff recommendation, including the modified conditions and findings presented at the hearing.

Action: Approved with modified conditions and findings.
Resolution No.: 09-010
Appeal: ten days

Fogg: Aye
Feibusch: Aye
Shahhosseini: Aye
Schaffner: Second: Aye
Davis: Motion: Aye

Vote: 5 Ayes, 0 Noes, 0 Absent, 0 Abstain

There being no further business to come before the Planning Commission at this time, all items having been handled and all persons having been given an opportunity to be heard on any matter before the Planning Commission in public hearing or otherwise, the meeting was adjourned.

Minutes adopted April 30, 2009

COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

To: Sonoma County Planning Commission
From: Cynthia Demidovich, Planner III
Subject: PLP09-0008, [REDACTED]
Date: April 2, 2009 at 1:10 p.m.

Background

At its regularly scheduled meeting on March 19, 2009, the Planning Commission (PC) reviewed a request by [REDACTED] for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3 by reducing the side yard setback from ten feet to five feet, reducing the front yard setback from 30 feet to 20 feet and increasing the existing building envelope of Lot 24 for a total of 1,985 square feet for property located at 5231 Las Flores Road, Bodega Bay.

The PC opened the public hearing, and after taking testimony closed the public hearing and continued the deliberation to 1:10 p.m. on April 2, 2009, to allow staff to provide the following information: whether the Sereno Del Mar Conditions, Covenants and Restrictions (CC&R's) would be violated if the Certificate of Modification and the Zoning Permit were approved; whether the County has any obligation to enforce the CC&R's, and does the scope of the Sereno Del Mar Architectural Control Committee have authority relative to the proposed project.

Issue #1: Sereno Del Mar Conditions, Covenants and Restrictions

Discussion

Would the requested reduction of setbacks violate the Sereno Del Mar CC&R's?

Staff Response

County Counsel advised staff that the requested reduction of the side setbacks would not violate the CC&R's established by the original developers in 1972. The CC&R's expressly permit 5 foot side setbacks. See CC&R's paragraph 3(b) (page 3).

County Counsel advised staff that it is unclear whether the requested reduction of the front setback is permissible under the CC&R's. The language of the CC&R's is open to interpretation. In paragraph 2 (page 2), the CC&R's state that "No fence or wall shall be erected . . . nearer to any street than the minimum building setback line as imposed by the recordation of the Subdivision Map as aforementioned." Similarly, in paragraph 3(a) (page 3), the CC&R's state that "No building shall be located on any lot nearer to the front lot line . . . than the minimum building setback lines shown on the recorded plat." It is unclear whether these provisions were intended to refer only to the map as originally drawn or to the recorded map as it might be amended from time to time, leaving open the possibility for modifications of the map in accordance with law. Final interpretation of the CC&R's is a matter best left to the residents of Sereno Del Mar, however, the County approved the map and established the setbacks and retains the authority to independently modify them under State law and the Sonoma County

Code.

Discussion

Can the County enforce the Sereno Del Mar CC&R's?

Staff Response

County Counsel advised staff that the 1972 Sereno Del Mar CC&R's does not authorize enforcement by the County. Paragraph 22 (Page 5) of the CC&R's allows only for private enforcement by "persons owning any real property situated in said development . . ."

In many projects the CC&R's designate the County as a third party beneficiary, with the right but not the obligation to enforce their terms. This provision is intended to allow the County to enforce conditions of project approval that were incorporated into the CC&R's. The Sereno Del Mar CC&R's, however, do not include that provision. Even when that provision is included, the County generally declines to engage in such enforcement.

The County has a long-standing policy and practice that it does not engage in to interpretation or enforcement of private agreements. Given the ambiguity of the CC&R's and the absence of enforcement authority, County Counsel would caution against changing the County's policy and practice in this instance, absent clear direction from the Board.

Discussion

What authority does the Sereno Del Mar Architectural Control Committee have with the proposed project?

Staff Response

County Counsel advised staff that the CC&R's, in Paragraph 2 (Page 2), authorize the Architectural Control Committee to review an application for (a) quality of workmanship and materials, (b) harmony of external design and exterior color schemes with existing structures, and (c) location "with respect to topography and finish grade elevation." The CC&R's also, in Paragraph 1 (Page 2), authorize the Architectural Control Committee to approve variances from the 16 foot height limit.

The County Code similarly authorizes the Architectural Control Committee to approve variances from the 16 foot height limit, up to 24 feet. Section 26C-92(c)(3) of the Coastal Zoning Ordinance.

Although County Counsel found nothing that expressly authorizes the Architectural Control Committee to review requests for reduction of setbacks, in this case the Architectural Control Committee has reviewed and approved the requested reductions (see exhibit C).

Issue #2: Private Views

Staff Response

Per section 66472.1 of the Subdivision Map Act the Planning Commission must make a finding that the Certificate of Modification does not alter “any right, title or interest in the real property reflected on the recorded map.”

County Counsel has advised staff that absent of a view easement, the neighbors do not have a legal right to an unobstructed view, nor does the view constitute an “interest in real property.” On this record, the Planning Commission is has discretion to make the required finding.

The following section 26C-92(c)(8) of the Coastal Zoning Ordinance protects private views in connection with requests for increased building heights:

An increase in height for residential structures west of Highway 1, up to a maximum of twenty-four feet (24') feet, may be approved if the appropriate review body finds that the structure is no higher than sixteen feet (16') feet above the corridor route grade directly across from the building site, will not block coast views from the corridor route or neighboring properties and is compatible with community character.

An increase in height for structures east of Highway 1 up to a maximum of thirty-five feet (35') may be considered if the appropriate review body finds that the structure is no higher than twenty four feet (24') above the corridor route grade directly across from the building site, will not block coast views from the corridor route or neighboring properties and is compatible with community character.

In addition, the PC may consider impacts on private views when a large project will affect several neighboring parcels. In this case, photographic evidence shows that the proposed 16 foot tall residence will not block the neighbor's view.

Recommendation

Recommend that the Planning Commission approve the request for a Certificate of Modification and a Zoning Permit to modify the Final Map of Sereno Del Mar Unit 3, subject to the conditions in Exhibit "A".

List of Attachments

- Exhibit A: Draft Conditions of Approval
- Exhibit B: Sereno Del Mar CC&R's
- Exhibit C: Sereno Del Mar Architectural Control Committee Correspondence dated November 28, 2007
- Exhibit D: Applicant's Consultant's Correspondence dated March 20, 2009
- Exhibit E: Neighbor's Correspondence dated March 22, 2009
- Exhibit F: Applicant's Correspondence dated March 23, 2009
- Exhibit G: Site Photo Taken by the Applicant
- Exhibit H: Planning Commission Staff Report dated March 19, 2009
- Exhibit I: Planning Commission Hearing Minutes dated March 19, 2009
- Exhibit J: Draft Resolution

Background information is on file at:

County of Sonoma Board of Supervisors Office
575 Administration Drive, Room 100A
Santa Rosa, CA 95403

It can be viewed and/or copies requested during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Call (707) 565-2241 for more information.

Supporting maps are on file at:

County of Sonoma Board of Supervisors Office
575 Administration Drive, Room 100A
Santa Rosa, CA 95403

They can be viewed and/or copies requested during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Call (707) 565-2241 for more information.