#### CALIFORNIA COASTAL COMMISSION

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#### STAFF REPORT: APPEAL

#### **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Sonoma

DECISION: Approval with Conditions

APPEAL NO.: A-2-SON-08-010

APPLICANTS: Steven Star

PROJECT LOCATION: 221 Los Santos drive, Bodega Bay (Sonoma

County)

PROJECT DESCRIPTION: Construction of a 1,208-square-foot single family

residence and a 400-square-foot detached garage and reduction of the riparian corridor setback from

100 feet to 50 feet.

APPELLANTS: 1) Brian Hines

SUBSTANTIVE FILE 1) Sonoma County PLP No. 06-0070;

DOCUMENTS: 2) Sonoma County Local Coastal Program; and

3) Riparian Corridor Determination, Kjeldsen Biological Consulting, December 4, 2003

#### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that <u>NO SUBSTANTIAL ISSUE</u> exists with respect to the grounds on which the appeal has been filed.

The project as approved by the County consists of the construction of a 1,208-square-foot, 19-foot-high single family residence and a 400 square foot detached garage, and reduction of the riparian corridor setback from 100 feet to 50 feet. The project is located at 221 Los Santos drive in the Serrano Del Mar subdivision, Bodega Bay, in Sonoma County.

The appellant raises two separate contentions that the project as approved is inconsistent with the certified Sonoma County Local Coastal Program. These contentions are: (1) that the County-approved reduction in the 100-foot riparian setback between the development and the riparian corridor is inconsistent with the Local Coastal Plan; and (2) the approved development's 19-foot height is inconsistent with the LCP, which generally limits development to a maximum 16-foot height.

Staff recommends that the Commission find that both contentions are valid grounds for an appeal, but <u>do not raise a substantial issue</u> of conformity of the approved development with the certified LCP.

Staff recommends that the Commission find that the contention regarding project inconsistency with the LCP required riparian setback does not raise a substantial issue because all the standards for determining appropriate buffer widths contained in Attachment "M" of the County's certified Administrative Manual (i.e., Implementation Plan) support the reduction in the buffer width from 100 to 50 feet. While the LCP Part 1 (LUP) riparian policy identifies a 100-foot riparian setback, the Administrative Manual was certified to implement and interpret LUP policy, and rather than require a uniform buffer width, it contains standards which are to be used in determining a specific buffer width for each project. The applicant's biologist demonstrated that a 50-foot buffer is adequate to protect the riparian resource, and staff of the California Department of Fish and Game agreed with the reduced buffer width. Therefore, given that the County had a high degree of legal and factual support for its decision to reduce the buffer from 100-feet to 50-feet, Staff recommends that the Commission find that the appeal does not raise a substantial issue of conformance with the LCP.

Staff recommends that the contention regarding the project height's conformance with the LCP does not raise a substantial issue because the project, as approved by the County, only allows a 19-foot-high residence conditioned on the receipt of approval from the Sereno Del Mar Architectural Control Committee. The County condition stipulates that if approval cannot be obtained, then the home shall be 16 feet, consistent with the height

requirements of the certified zoning code. Therefore, the County has a high degree of legal and factual support for its decision. Further, the significance of the coastal resource involved with this allegation, i.e., visual resources east of the highway in a relatively built-out subdivision, is low given the fact that no public views to the coast would be obstructed by the approved development. Moreover, in light of the above, the height issue raises only a local issue rather than one with regional or statewide significance.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP. The motion to adopt the staff recommendation of No Substantial Issue is found on page no. 4.

#### **STAFF NOTES:**

#### 1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act. The subject development is appealable to the Commission because the approved house is within 100 feet of a stream.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear

arguments and vote on the substantial issue question. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

#### 2. Filing of Appeal

An appeal was filed by Brian Hines (exhibit 4). The appeal was filed with the Commission in a timely manner on April 1, 2008 within 10 working days of receipt by the Commission of the County's Notice of Final Local Action (exhibit 5) on March 20, 2008.

#### I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

#### **MOTION:**

I move that the Commission determine that Appeal No. A-2-SON-08-010 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

# **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

#### RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-2-SON-08-010 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

#### I. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

# A. <u>APPELLANTS' CONTENTIONS.</u>

The Commission received one appeal of the County of Sonoma's decision to approve the development from Brian Hines. The project as approved by the County involves construction of a 1,208-square-foot single family residence and a 400 square foot detached garage and reduction of the riparian corridor setback from 100 feet to 50 feet The project is located at 221 Los Santos drive, Bodega Bay (Sonoma County).

The appeal raises two contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as exhibit 4.

#### 1. Reduced Riparian Setback

The Appellant contends that the County-approved reduction in the 100-foot required riparian setback between the development and the riparian corridor is inconsistent with the Local Coastal Plan. The appellant further contends that since other homes along this riparian corridor, including his own, were required to have a 100' setback from the riparian area, the approval is inconsistent with the Implementation Plan (Attachment "M" of the Administrative Manual). In addition, the appellant contends that the County's finding that a "takings" would result if a full 100-foot riparian setback were required was not supported by an "alternatives analysis" which, if required, should have addressed redesigning of the home and setback to meet the 100-foot riparian setback.

#### 2. Height

The Appellant also contends that the approved development's 19-foot height is inconsistent with the LCP, which generally limits development to a maximum 16-foot height. The appellant points to the fact that the Sereno Del Mar Architectural Control Committee (ACC) objected to the increased height and ACC approval is required by the LCP.

#### B. LOCAL GOVERNMENT ACTION

On December 13, 2007, the Sonoma County Board of Zoning Adjustments approved with conditions both a coastal permit to construct a 1,208 square foot single family residence and a 400 square foot detached garage and a Use Permit to reduce the required riparian corridor setback from 100 to 50 feet. Condition 2 required that the applicant redesign the project to maximize the setback area, but allowed the setback to be minimized to 50-feet if necessary.

On December 24, 2007, an appeal of the BZA decision was filed with the Board of Supervisors by Brian Hines. The appeal was based on an allegation that the reduced riparian setback was inconsistent with the LCP and that the approved development height of 19-feet was not in conformance with the Sereno Del Mar CC&Rs. The appellant noted that his own request for a reduced riparian setback on the same street was denied by the BZA in 2006 and that he was required to redesign his home to meet the 100-foot setback.

On March 11, 2008 the Sonoma County Board of Supervisors approved with conditions the proposed project and reduced riparian setback. The approval was based in part on findings that a 50-foot riparian setback is adequate to protect the resource, and that the reduced riparian setback is consistent with the LCP. Therefore, different than the BZA, condition 2 did not require that the project be re-designed to maximize the setback, but required that the 50-foot riparian setback apply to all on-site development, including decks, patios, accessory structures, paving or other hard surface materials, landscaping, and trails, and that the setback area remain in a natural undisturbed state. In addition, condition 10 required the applicant to obtain approval of an exception to the height limit from the Sereno Del Mar Architectural Control Committee; condition 3 prohibited the use of herbicide and pesticides outside of all structures; condition 4 required the submittal of an erosion control plan that minimizes the project impact to the riparian area; condition 11 required all utilities to be placed underground; condition12 required that exterior light fixtures be shielded and downcast; and condition13 that all exterior materials be nonglare and non-reflective materials.

Commission staff received the Notice of Final Local Action of the Board's approval of the project on March 20, 2008 (exhibit 5). The County's approval of the project was appealed to the Coastal Commission in a timely manner on April 1, 2008 within 10-working days after receipt by the Commission of the Notice of Final Local Action. Staff requested a copy of the local record on April 1, 2008. A copy of the local record was received on April 11, 2008.

#### C. PROJECT AND SITE DESCRIPTION.

Approval has been granted by the County to construct a 1,208-square-foot, 19-foot-high single family residence and a 400-square-foot detached garage and to reduce the required

riparian corridor setback from 100 feet to 50 feet on a 26,825-square-foot parcel. The development also includes 137 square feet of covered porches, appurtenant utility connections, and development of a two bedroom septic system with a 100% expansion area (exhibit 3). The approved septic system would occupy a large portion of the front half of the project site, which is farthest from the riparian area. The project is located at 221 Los Santos Drive, Bodega Bay, in the Serreno Del Mar subdivision (Sonoma County), east of Highway One (exhibit 2).

The 26,825-square-foot parcel is relatively flat and consists of fallow grassland. The residence, as approved by the County, is sited approximately 50 feet from the edge of riparian vegetation located to the north on a "Natural Drainage Easement" parcel. According to a report by Kjeldsen Biological Consulting, riparian vegetation is present along the banks of the stream, but adjacent to the top of the bank is a dense thicket of coyote brush, which is not a riparian plant. Coyote brush extends from the top of the stream bank approximately 50 feet wide between the stream and the approved development.

#### D. SUBSTANTIAL ISSUE ANALYSIS.

# 1. Grounds for Appeal

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Both contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (a) riparian setback requirements; and (b) height limits.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California

Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- 1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- 2. The extent and scope of the development as approved or denied by the local government;
- 3. The significance of the coastal resources affected by the decision;
- 4. The precedential value of the local government's decision for future interpretations of its LCP; and
- 5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to all of the allegations below, the appeal raises no substantial issue with regard to the approved project's conformance with the certified Sonoma County LCP.

#### **Allegations Raising No Substantial Issue:**

#### a. Reduced Riparian Setback

The Appellant contends that the County-approved reduction in the 100-foot required riparian setback between the development and the riparian corridor is inconsistent with the Local Coastal Plan. The appellant further contends that since other homes along this riparian corridor, including his own, were required to have a 100-foot setback from the riparian area, that the approval is inconsistent with the Implementation Plan (certified Administrative Manual Attachment "M"). In addition, the appellant contends that the County's finding that a "takings" would result if a full 100-foot riparian setback were required was not supported by an "alternatives analysis" that, if required by the County, should have addressed re-designing of the home and setback to meet the 100-foot riparian setback.

#### LCP Policies and Standards

#### LCP Part 1 (LUP) Section III-3 defines "riparian" as:

Tree and shrub vegetation of freshwater courses. A line or belt of vegetation following the course of a river or stream on the immediate banks and appearing visually and structurally separate from the surrounding landscape. Boundaries are delineated by the outer edge of riparian vegetation. Riparian vegetation consists of that vegetation in or adjacent to permanent or intermittent freshwater streams and other freshwater bodies where at least 50 percent of the cover is made up of species such as alders, willows, cottonwoods, box elders, ferns, and blackberries.

## LCP Part 1 (LUP) Section III-12 Policy 9 states:

Prohibit construction of permanent structures within riparian areas as defined, or 100 feet from the lowest line of riparian vegetation, whichever is greater, except development dependent on the resources in the riparian habitat, including public recreation facilities related to the resource. Any development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the riparian habitat. The riparian area or 100 foot wide buffer zone should generally be maintained in a natural, undisturbed state. Trails and access may be permitted if studies determine no long-term adverse impacts would result from their construction, maintenance, and public use. Trails should be made of porous materials.

### Policy 13 states:

Prohibit pesticide and herbicide application in a riparian protection zone of 100 feet above the lowest line of streamside vegetation, or within riparian areas as defined, whichever is greater.

Attachment "M" of the certified Sonoma County Administrative Manual (IP), "Criteria for Establishing Buffer Areas," states:

A buffer area provides essential open space between the development and the environmentally sensitive habitat area. The existence of this open space ensures that the type and scale of development proposed will not significantly degrade the habitat area (as required by Section 30240). Therefore, development allowed in a buffer area is limited to access paths, fences necessary to protect the habitat area, and similar uses which have either beneficial effects or at least no significant adverse effects on the environmentally sensitive habitat area. A buffer area is not itself a part of the environmentally sensitive habitat area, but a "buffer" or "screen" that protects the habitat area from adverse environmental impacts caused by the development.

A buffer area should be established for each development adjacent to environmentally sensitive habitat areas based on the standards enumerated below. The width of a buffer area will vary depending upon the analysis. The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home or one commercial office building) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a much wider buffer area should be required. For this reason, the guideline does not recommend a uniform width. The appropriate width will vary with the analysis based upon the standards.

For a wetland, the buffer area should be measured from the landward edge of the wetland (Appendix D). For a stream or river, the buffer area should be measured landward from the landward edge of riparian vegetation or from the top edge of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries. Standards for determining the appropriate width of the buffer area as follows:

- Biological significance of adjacent lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. That is, functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance would depend upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding or resting). This determination requires the expertise of an ecologist, wildlife biologist, ornithologist, or botanist who is familiar with the particular type of habitat involved. Where a significant functional relationship exists, the land supporting this relationship should also be considered to be part of the environmentally sensitive habitat area, and the buffer area should be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer should be extended from the edge of the wetland, stream or riparian habitat (for example) which is adjacent to the proposed development (as opposed to the adjacent area which is significantly related ecologically).
- Sensitivity of species to disturbance. The width of the buffer area should be based, in part, on the
  distance necessary to ensure that the most sensitive species of plants and animals will not be
  disturbed significantly by the permitted development. Such a determination should be based on
  the following:
  - Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species.
  - An assessment of the short-term and long-term adaptability of various species to human disturbance.
- 3. <u>Susceptibility of parcel to erosion.</u> The width of the buffer area should be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

- 4. <u>Use of natural topographic features to located development.</u> Hills and bluffs adjacent to environmentally sensitive habitat areas should be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from environmentally sensitive habitat areas. Similarly, bluff faces should not be developed, but should be included in the buffer area.
- 5. <u>Use of existing cultural features to locate buffer zones.</u> Cultural features, (e.g., roads and dikes) should be used, where feasible, to buffer habitat areas. Where feasible, development should be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the environmentally sensitive habitat area.
- 6. Lot configuration and location of existing development. Where an existing subdivision or other development is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted. However, if that distance is less than 100 feet, additional mitigation measures (e.g., planting of native vegetation which grows locally) should be provided to ensure additional protection. Where development is proposed in an area which is largely undeveloped, the widest and most protective buffer area feasible should be required.
- 7. Type and scale of development proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer area necessary to protect the environmentally sensitive habitat area. For example, due to domestic pets, human use and vandalism, residential developments may not be as compatible as light industrial developments adjacent to wetlands, and may therefore require wider buffer areas. However, such evaluations should be made on a case-by-case basis depending upon the resources involved, and the type and density of development on adjacent lands.

#### Discussion

The Appellant contends that the County-approved reduction in the 100-foot required riparian setback between the development and the riparian corridor is inconsistent with the Local Coastal Plan. The appellant further contends that since other homes along this riparian corridor, including his own, were required to have a 100-foot setback from the riparian area, that the approval is inconsistent with the Implementation Plan (certified Administrative Manual Attachment "M"). In addition, the appellant contends that the County's finding that a "takings" would result if a full 100-foot riparian setback were required was not supported by an "alternatives analysis" that, if required by the County, should have addressed re-designing of the home and setback to meet the 100-foot riparian setback.

Certified LUP Section III-12 Policy 9 does prohibit permanent structures within 100 feet of riparian areas unless the development is "dependent on the resource." This policy goes on to say that any development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the riparian habitat. In Sonoma County's case, the LUP policies must be looked at in conjunction with the Implementation Plan (IP) when determining appropriate buffer widths. Attachment "M" (shown above) of the certified Administrative Manual was developed and certified to further interpret and implement the riparian policies of the LUP by setting criteria for establishing buffer widths. Of particular note, the preamble to the seven criteria states:

... The width of a buffer area will vary depending upon the analysis. The buffer area should be a minimum of 100 feet for small projects (such as one single

family home or one commercial office building) <u>unless the applicant can</u> <u>demonstrate that 100 feet is unnecessary to protect the resources of the habitat</u> area." (emphasis added)

In this case, the County found that the applicant has demonstrated that 100 feet is unnecessary to protect the resources of the riparian area, and therefore Sonoma County has a high degree of factual and legal support for its decision. Seven standards are enumerated in Attachment "M" for determining appropriate buffer widths (and hence reducing buffer widths from the required 100 feet). Consistent with the requirements of the LCP, Sonoma County evaluated each of these standards in making its decision to approve the reduced buffer width at the subject site. Commission staff's analysis of the seven standards is outlined below. This analysis utilized the Sonoma County staff report, the Riparian Corridor Determination by Kjeldsen Biological Consulting dated December 4, 2003, aerial photographs, and the Sonoma County LCP.

#### 1. <u>Biological Significance of Adjacent Lands:</u>

This standard emphasizes that if the land on which development would be located is functionally related to the habitat that needs to be protected, a larger buffer should be required to allow the relationship to be uninterrupted. For example, if an animal species from the riparian area spends a significant amount of its life cycle on adjacent lands, than buffer widths should be wider to protect those lands. In this case, the area of the subject property where the home would be located is not connected to the riparian habitat area because it is separated by a dense thicket of coyote brush. Coyote brush, which is not a riparian plant, extends from the top of the streambank approximately 50 feet, creating a natural buffer between the proposed building site and the riparian habitat. The Kjeldsen biological report concluded that due to these site conditions and the habitat present, a 50foot setback is justified and adequate to protect the riparian habitat. The study further recommended that no covote brush be removed as part of development so that it can continue to provide a buffer to the riparian area, and that use of herbicide and pesticide should be prohibited within the buffer area. The California Department of Fish and Game concurred with these recommendations and the reduced buffer width in correspondence to the County dated July 12, 2004 (exhibit 8).

#### 2. Sensitivity of species to disturbance

This standard emphasizes that the buffer width should be based, in part, by the requirements of the sensitive plants and animals using the habitat. According to the Kjeldsen report there are no sensitive species that would be disturbed as a result of a reduced setback from 100 to 50 feet. CDFG noted in its July 12, 2004 correspondence to the County that the stream is ephemeral in nature and supports no fish or other aquatic population.

#### 3. Susceptibility of parcel to erosion

This standard emphasizes the need to examine the slope, soils, and impervious surface coverage when determining the buffer width to prevent erosion and sedimentation into the habitat area. In this case, the property is relatively flat with only a gentle slope to the northwest. Therefore, the approved project would not change the potential for erosion and sedimentation to enter the riparian habitat. The existing 50-foot-wide swath of coyote brush would not be disturbed and would be an adequate buffer to prevent sediment from discharging into the stream. Further, the County's grading permit for the approved project will require erosion control measures to be put in place pre- and post-construction, further minimizing the potential for erosion and for sedimentation to enter the riparian habitat.

#### 4. Use of natural topographic features to locate development

This standard emphasizes that if there are existing natural topographic features, such as hills or bluffs present that could act as buffers, than they should be used to buffer habitat areas. In the case of the subject development, there are no hills or bluffs on site and the site is relatively flat. However, there is a dense thicket of natural coyote brush, a non-riparian plant that would serve to buffer the development from the riparian habitat.

# 5. Use of existing cultural features to locate buffer zones

This standard emphasizes that existing cultural or "manmade" features (e.g., roads or dikes) should be used as buffers where applicable. In the case of the subject development, there are no roads, dikes, or other manmade features running through the property that could be used as buffers. Therefore, this standard is not relevant in determining the appropriate buffer width for the subject development.

#### 6. Lot configuration and location of existing development

This standard states in part that where an existing subdivision is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted. The appellant contends that the County's approval of the reduced buffer width for the subject property does not conform with this standard because he re-designed his own home next door to meet the 100-foot setback requirement and other landowners along the stream have complied with the 100-foot requirement. The appellant also emphasizes that there are several comment letters from the neighborhood pointing out the unfairness of the County in granting an exception when others have been required to comply with the 100-foot setback.

Commission staff has examined aerial photographs of the Sereno Del Mar subdivision and the homes along the riparian area in question (exhibit 9). Of primary note is that there does not appear to be a uniform or consistent distance between existing homes and the

riparian area. While the appellant's approved home has maintained the 100-foot setback between his home and the riparian area, other neighboring homes are within 100-feet of the riparian area. Similarly, in regards to the neighborhood comment letters opposing the reduced setback "because others have been required to comply with the 100-foot requirement" (included in the appeal), of the 18 letters submitted, only four letters were from homeowners situated adjacent to the riparian area.

The appellant also has 5,425 square feet more area on his property to work with, and has plans to build a much larger home, which was originally 3,724 square feet but was reduced to 3,164 square feet to meet the 100-foot setback (see type and scale of development below). In comparison the subject applicant has approval for a 1, 208-square-foot home on a 26,825-square-foot lot and the septic area must be located at least 100 feet from the riparian area.

Therefore, in view of the fact that an analysis of all of the other buffer width standards support the reduced buffer width and because the existing homes in the subdivision do not have a demonstrated uniform buffer distance from the riparian area, with some appearing to be less than 100 feet away from the riparian area and others 100 feet or more away, the "location of existing development standard" is not determinative in specifying buffer width for the subject development. Therefore, the County had a high degree of factual and legal support for its decision to approve the reduced buffer width.

# 7. Type and Scale of Development

This standard emphasizes that the type and scale of the development should have a large influence on the size of the buffer area. It also emphasizes that this determination should be made on a case by case basis, depending on the resources involved and the type and density of development. The development approved by the County is a modest sized residence on a relatively smaller lot (1,208-square-foot residence and 400-square-foot garage on a 26,825-square-foot parcel). This distinguishes itself from the neighboring appellant, who is building a 3,164 square foot home on a parcel that is 5,425 square feet larger, and where a 100-foot setback to the riparian area is in scale with the size of the development. According to the Kjeldsen biological report and the concurrence from the CDFG, the 50-foot buffer on the smaller subject property would be adequate to buffer the riparian area from the residential uses because of the dense thicket of coyote brush between the approved home and the riparian area. The County has also conditioned the approval to require no removal of the covote brush and to maintain it in its natural state, and that no herbicides or pesticides shall be used. Therefore, the County's decision to approve the reduced buffer width is consistent with this standard and it had a high degree of factual and legal support for its decision.

#### Takings Issue

The appellant also disputes County's finding that a "takings" would result if a full 100-foot riparian setback were required because it was not supported by an "alternatives analysis" that, if required by the County, should have addressed re-designing of the home and setback to meet the 100-foot riparian setback. The Commission finds that since the approved development is consistent with the LCP standards for determining appropriate buffer widths the County had a high degree of legal and factual support for its decision to approve the project, and a "takings" finding was not necessary. Therefore, the allegation that an alternatives analysis should have been conducted and the home re-designed to meet a 100-foot setback raises no substantial issue of conformance with the certified LCP.

#### Riparian Setback Conclusion

For all of the above reasons, the local government had a high degree of factual and legal support for its decision, and no substantial issue is raised with regard to the conformance of the project as approved with the provisions of LCP Part 1 (LUP) Section III-12 Policy 9 and Attachment "M" of the certified Sonoma County Administrative Manual (IP). Therefore, the Commission finds that the contention raised by the appellants does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program.

#### b. Height

The Appellant also contends that the approved development's 19-foot height is inconsistent with the LCP, which requires a maximum 16-foot height. The appellant points out that the Sereno Del Mar Architectural Control Committee (ACC) objected to the increased height and that ACC approval is required by the LCP.

#### LCP Policies and Standards

Certified Coastal Zoning Ordinance (IP) Section 26-C-92(c) (Height limits in rural residential district) states:

• • •

- (3) East of Highway 1 in the Sereno Del Mar Subdivision: Residential height limits are sixteen (16) feet. The Sereno Del Mar Architectural Review committee may grant a higher structure to a maximum of 24-feet in accordance with subsection (7) below...
- (4) East of Highway 1 and visible from designated scenic roads: Residential and commercial height limits are twenty-four (24) feet

- (5) East of Highway 1 and not visible from designated scenic roads: Thirty-five (35) feet
- (6) Agricultural structures: Thirty-five (35) feet; however, structures shall not obstruct views of the shoreline from coastal roads, vista points, recreation areas, and beaches; and structures shall be sited to minimize visual impacts
- (7) Maximum height for telecommunication facilities is subject to the provisions of this Article and Section 26C-325.7.

# Certified Administrative Manual (IP) Chapter 1, Section B(8) Design Review, "c" states:

...c. The County Design Review Committee shall utilize the Coastal Plan Visual Resource Element policies, and Coastal Design Guidelines (Attachment I). In addition, Design Review for The Sea Ranch, Bodega Harbour, Timber Cove and Sereno del Mar shall be conducted by local design review committees.

# Certified Administrative Manual (IP) Attachment "I" "Coastal Design Review Guidelines" A.3. states:

Other Coastal Areas: Development (including additions and exterior remodelings) within "rural community" or "urban service area" boundaries, and within view of designated scenic roads shall be reviewed by the County Design Review Committee. The Design Review Committee, and on appeal the Board of Zoning Adjustments and Board of Supervisors, shall find that the proposal conforms with County Design Review guidelines and standards, and with the following Coastal Plan design guidelines and standards, and with the following Coastal Plan design guidelines before approving the project. This requirement may be waived for parcels in these areas east of Highway 1 and not visible from designated scenic roads, by the Director of the Permit and Resource Management Department. The applicant must prove to the planner, through photographs, topographic maps, etc., that the project is not within view of a designated scenic road. Local Design Review Committees may be formed to apply the Coastal Zone Design Guidelines, if approved by the County Design Review Committee. Local Design Review criteria may also be adopted to augment or replace the Coastal Zone Design Review Guidelines, subject to County Design Review Committee <u>review and approval.</u> (emphasis added)

#### Discussion

As discussed in the Sonoma County Staff Report, the certified zoning code generally limits development to a maximum of 16 feet in the rural residential district, but the code

also grants to the Sereno Del Mar Architectural Control Committee authority to approve an increase in height up to 24 feet for structures proposed to be constructed within the subdivision. The project, as approved by the County, allows a 19-foot-high residence conditioned on the receipt of approval from the Sereno Del Mar Architectural Control Committee. The County condition stipulates that if approval cannot be obtained, then the home shall be 16 feet, consistent with the height requirements of the certified zoning code. Therefore, the County has a high degree of legal and factual support for its decision. Further, the significance of the coastal resource involved with this allegation, i.e., visual resources east of the highway in a relatively built out subdivision, is low given the fact that no public views to the coast would be obstructed by the approved development. Moreover, in light of the above, this aspect of the appeal raises only local issues rather those with regional or statewide significance. Therefore, no substantial issue is raised with respect to the approved project's consistency with the height requirements of the LCP.

#### Conclusion

The Commission finds that for the reasons stated above the appeal raises <u>no substantial</u> <u>issue</u> with respect to conformance of the approved project with the certified LCP.

#### **EXHIBITS**

- 1. Regional Location Map
- 2. Vicinity Map
- 3. Project Plans
- 4. Appeal from Brian Hines
- 5. Sonoma County Notice of Final Local Decision
- 6. Sonoma County Staff Reports
- 7. Findings of the Riparian Corridor Determination, Kjeldsen Biological Consulting
- 8. Correspondence from the California Department of Fish and Game
- 9. Aerial photo of subject development, riparian area, and neighboring homes

# D Live Search Maps

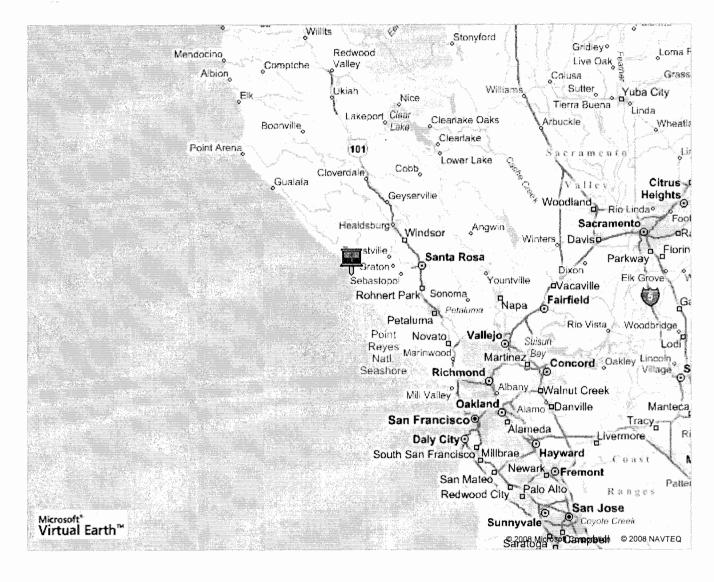
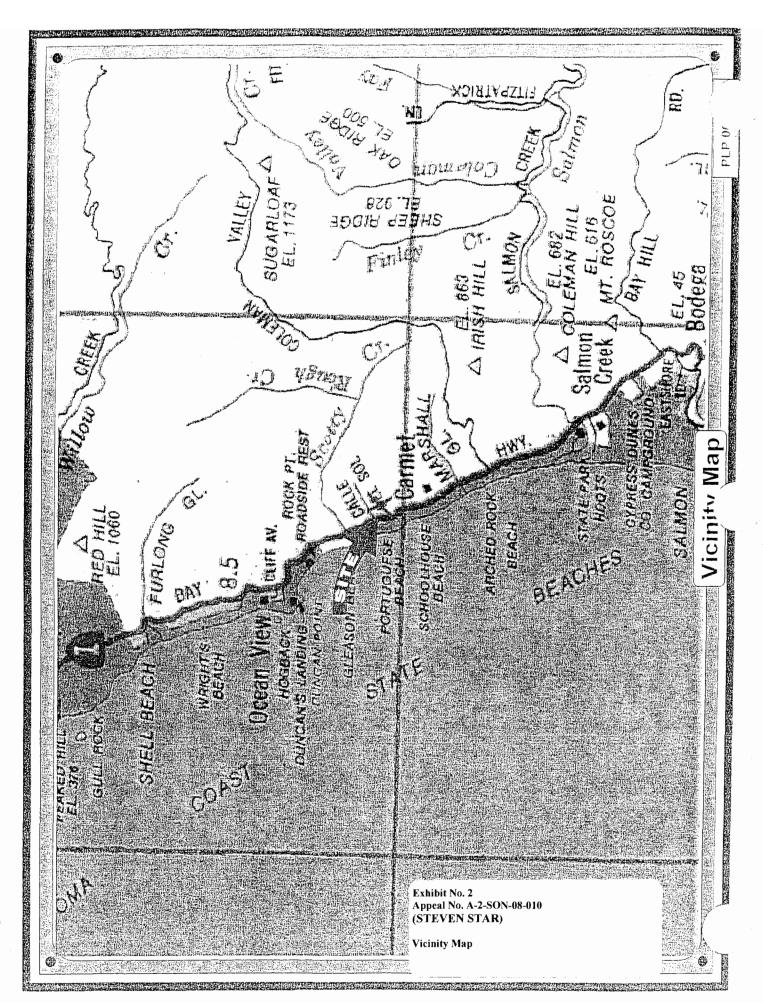
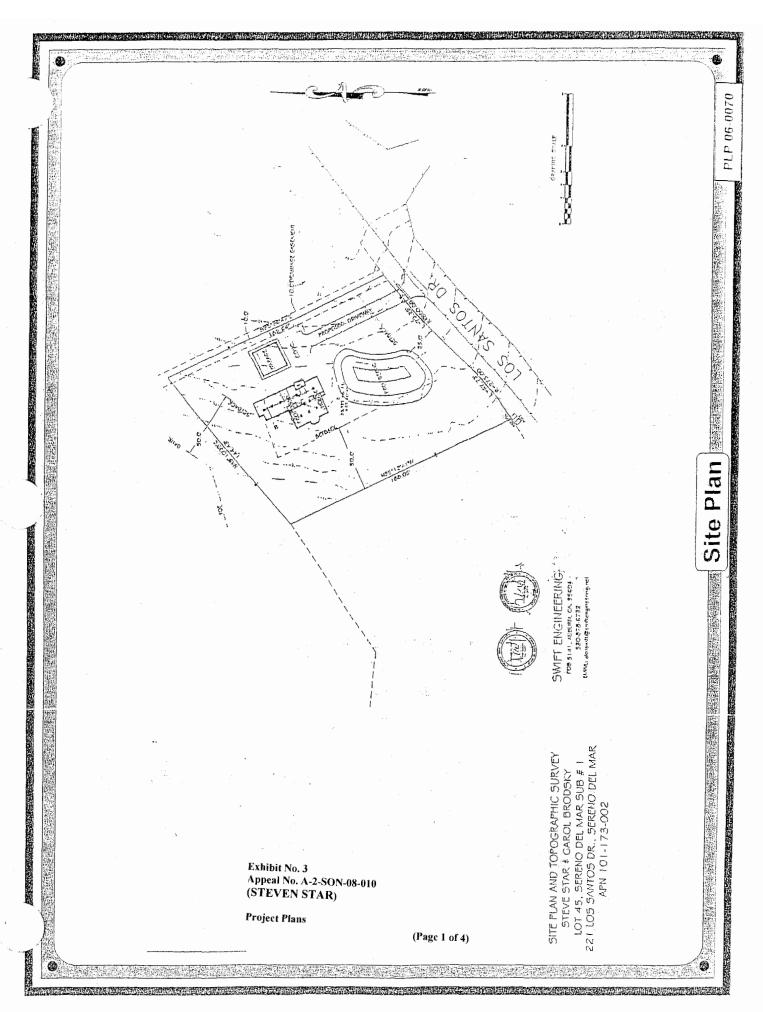
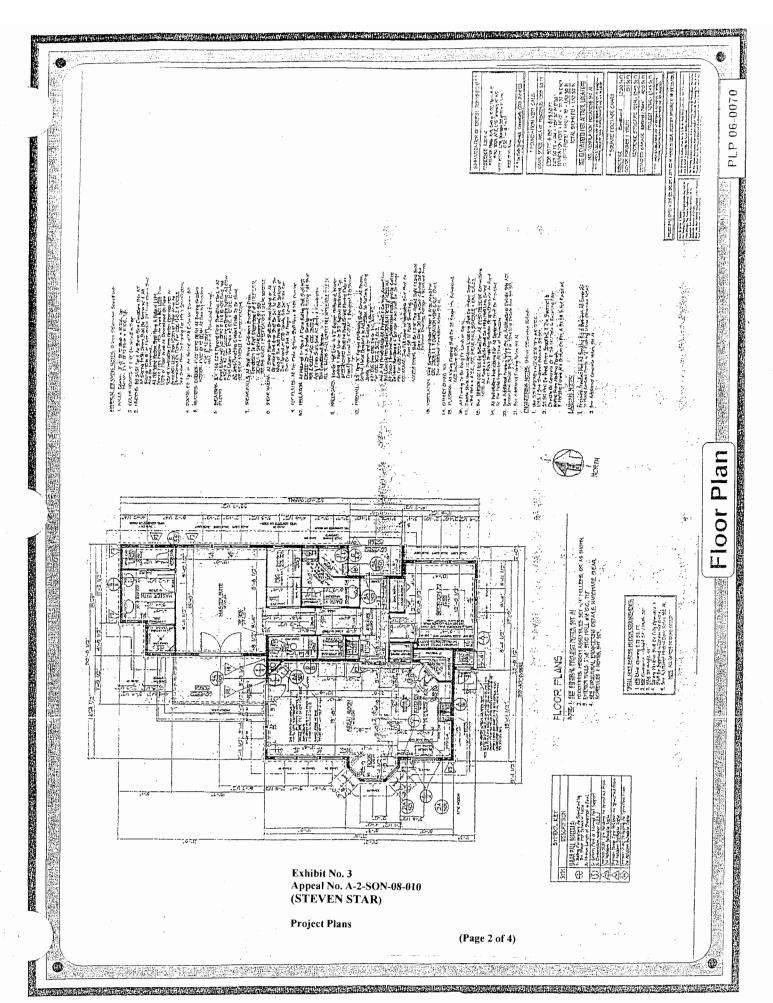


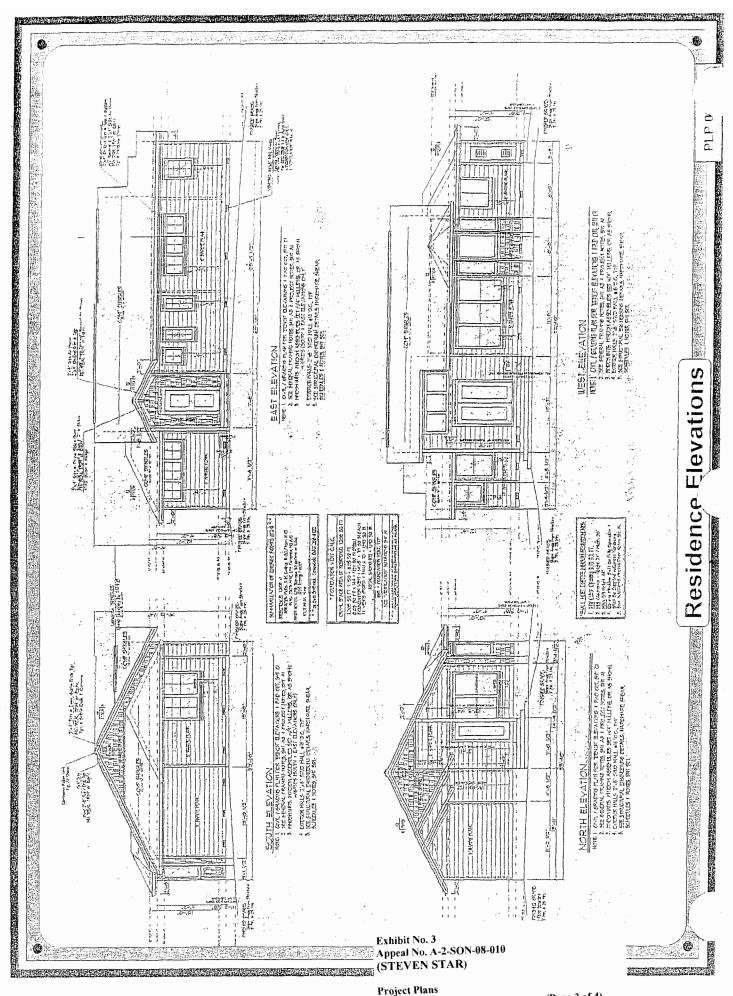
Exhibit No. 1 Appeal No. A-2-SON-08-010 (STEVEN STAR)

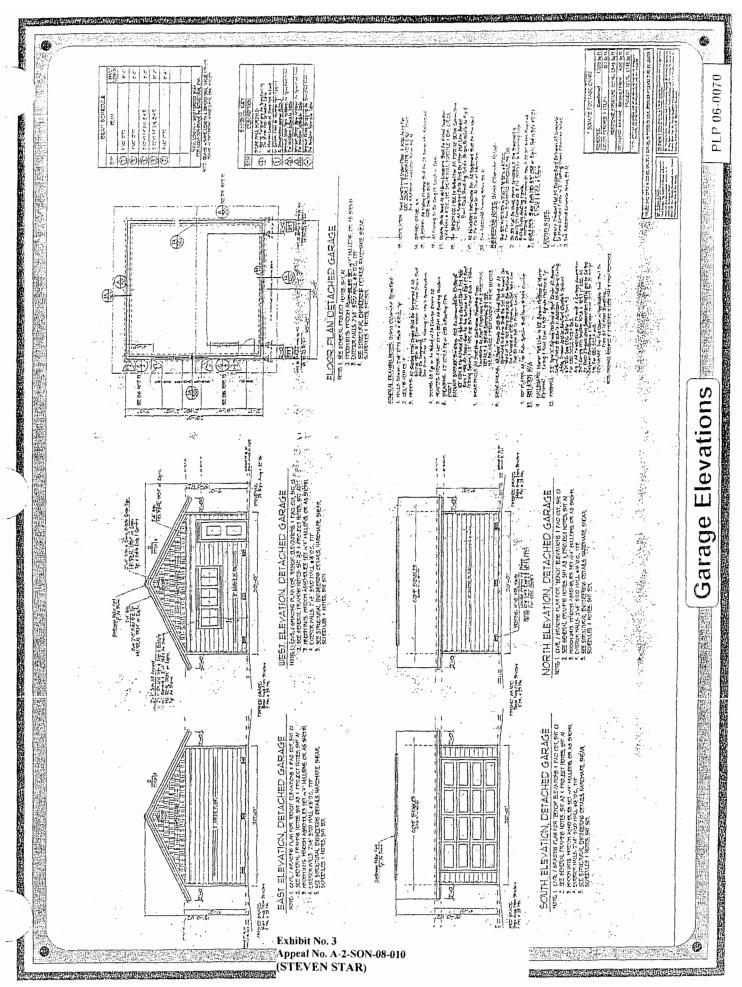
Regional Location Map











#### CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE 45 FREMONT, SUITE 2000 SAN FRANCISCO, CA 94105-2219 (415) 904-5260 FAX (415) 904-5400

www.coastal.ca.gov



# COMMISSION NOTIFICATION OF APPEAL

DATE: April 1, 2008

TO: Cynthia Demidovich, Planner

County of Sonoma, Permit and Resource Management Department -- Planning

Division

2550 Ventura Avenue Santa Rosa, CA 95403

FROM: Ruby Pap, Coastal Program Analyst

RE: Commission Appeal No. A-2-SON-08-010

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #:

PLP06-0070

Applicant(s):

Steven Star

Description:

To construct a 1,208 sq.ft. single family dwelling and a 400 sq.ft.

detached garage and a Use Permit to reduce the riparian corridor

setback from 100 feet to 50 feet.

Location:

221 Los Santos Drive, Bodega Bay (Sonoma County) (APN(s) 101-

173-02)

Local Decision:

**Approved** 

Appellant(s):

Brian Hines

Date Appeal Filed: 4/1/2008

The Commission appeal number assigned to this appeal is A-2-SON-08-010. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Sonoma's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Ruby Pap at the North Central Coast District office.

cc: Steven Star

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 1 of 38)

#### CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE 45 FREMONT STREET, SUITE 2000 SAN FRANCISCO, CA 94105-2219 VOICE (415) 904-5280 FAX (415) 904-5400



# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SEC	ΓΙΟΝ	I. Appellant(s)						
Name:	Brian	Hines						
Mailing	Address:	1468 Funston Drive	•					
City:	Santa	Rosa	Zip Code:	95407	Phone: 707-575-399	99		
SECT	rion	II. <u>Decision Bei</u>	ng Appealed					
1.	Name	of local/port gover	nment:		RECE	IVED		
County of Sonoma						1 2008		
2.	Brief o	lescription of devel		·				
Single	Family	Home in 100 Riparian	n Setback		CALIFO COASTAL CO	MMISSION MMISSION		
3.	Development's location (street address, assessor's parcel no., cross street, etc.):							
221 Lo	s Santo	s, Bodega Bay AP# 10	01-173-002					
4.	Descri	escription of decision being appealed (check one.):						
	App	roval; no special co	onditions					
$\boxtimes$	App	roval with special o	conditions:					
	Deni	ial						
:	Note:	For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.						
	,	TO BE COMPLETED BY COMMISSION:						
		PPEAL NO: 1-2- SON-08-010						
		)ATE FILED:	4/1/0	18				
		DISTRICT:	North (	entral	(ogs +			

# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5.	Decision being appealed was made by (che	ck one):				
	Planning Director/Zoning Administrator City Council/Board of Supervisors Planning Commission Other					
6.	Date of local government's decision:	BOS Hearing 3/11/08 NFA 3/18/08				
7.	Local government's file number (if any):	PLP06-0070				
SEC	TION III. Identification of Other Interes	sted Persons				
Give	the names and addresses of the following pa	arties. (Use additional paper as necessary.)				
a.	a. Name and mailing address of permit applicant:					
1727	n M. Star 4 Leisure Lane da City, CA 95959					
t	•	those who testified (either verbally or in writing) at r parties which you know to be interested and should				
Seren POB	Maggie Briare (BZA Hearing) (OPPOSED setback to Del Mar Architectural Control Committee 1102 ga Bay, CA 94923	reduction)				
POB	Vill Pier (BOS Hearing) (OPPOSED setback reducti 732 erano, CA 95433	on)				
POB	Colleen Fernald (BOS Hearing) (OPPOSED setback 3007 Rosa, CA 95402	c reduction)				
	wo parties spoke in SUPPORT of the setback reducting (there were no addresses in PRMD's meeting not	ion Dr. Michael Japone (friend) and Dennis Urba (realtor) at BOS				

(5) Prior to the BZA Hearing 17+ Letters were received from Sereno Del Mar residents OPPOSED to the reduction in the 100 foot Riparian Setback: Hines, Johnson, Franzman, Ginochio, Goyhenetche/McBee, Hansen, Tysinger, Ditto, Goldstone,

Olitzky, Garb, Gary, Burchill/Konrad, Young, Trimback, Larbre, Kruppa. (See attached)

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

#### SECTION IV. Reasons Supporting This Appeal

#### PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The Sonoma County Board of Supervisors has approved a reduction in the 100 foot riparian setback at 221 Los Santos Drive, Bodega Bay for a new single family home. This action violates the Local Coastal Plan that requires a 100 foot riparian setback. Prior to the Board of Zoning Adjustment(BZA) hearing on December 13, 2007, the Coastal Commission staff expressed its "verbal opposition" to a reduction in the setback and concluded that the home be redesigned to meet the 100 foot riparian setback. This is noted in the Minutes of the December 13 hearing and is more completely discussed on the tape recording of the hearing. This is the standard to which other homes along the riparian corridor have been held. The decision of the BZA was appealed to the Board of Supervisors which held its hearing on March 11, 2008. The reduction in the setback was also opposed by the Sereno Del Mar Architectural Control Committee(ACC). The ACC also objected to the building's 19 foot height which violates the Sereno Del Mar CC&Rs which requires a maximum height of 16 feet. ACC approval is required by the LCP 19 letters were received by the BZA from the Sereno Del Mar neighbors in opposition to the reduction in the 100 foot setback. The Coastal Commission stated opposition to a reduction in the 100 foot riparian setback on our lot next door at 225 Los Santos in a letter dated June 6, 2006 and made the following statement about 221 Los Santos, "Any development on that property would need to be carried out in a manner that would be consistent with all applicable LCP policies including the riparian setback standards." The Board of Supervisors did not consider the following wording in the County of Sonoma, Local Coastal Program, Part II Administrative Manual, Page 68, Attachment M, #6 which states, "LOT CONFIGURATION AND LOCATION OF EXISTING DEVELOPMENT: Where an existing subdivision or other development is largely built out and the buildings are uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted." We have redesigned our proposed house next door at 225 Los Santos to meet the 100 foot riparian setback requirement. Other landowners along the stream have also complied with the 100 foot setback requirement and comment letters from the neighborhood point out the unfairness of the County granting an exception when others have been required to comply with the 100 foot setback. Ironically, if a 50 foot setback is allowed at 221 Los Santos the home's bathroom will block the ocean view of the home at 225 Los Santos which has been designed to meet the 100 foot riparian setback requirement. The Board of Supervisors' finding that a "taking" would result at 221 Los Santos was not supported by any "alternatives analysis" which should include a 1 bedroom septic system alternative that could be 60% the size of the proposed 2 bedroom septic system. County staff has suggested how the house can also be redesigned so that the bedroom and bathroom do not so intentionally extend north into the riparian setback. The BZA made redesign of the house to maximize the setback a condition of their approval. The Board of Supervisors removed this condition and made a finding of that the lot is unbuildable with a greater setback but did not support this with an alternatives analysis that included redesign options. The Board of Supervisors erred in making the finding of a taking in this case.

# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

# SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

		R R 2162			
		Signature of Appellant(s) or Authorized Agent			
		Date:	3/25/2008		
Note:	If signed by agent, appella	ınt(s) mus	st also sign below.		
Section VI.	Agent Authorization				
/We hereby a					
to act as my/o	our representative and to bir	nd me/us i	n all matters concerning this appeal.		
		-	Signature of Appellant(s)		
		Date:			

R. Brian Hines 1468 Funston Drive Santa Rosa, CA 95407

December 10, 2007

Ms. Cynthia Demidovich
County of Sonoma
Permit & Resource Management Department
2550 Ventura Avenue
Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

#### Dear Ms. Demidovich:

We own 225 Los Santos which has been required to comply with the Local Coastal Plan's 100-foot riparian setback at a Board of Zoning Adjustment hearing in June 2006. We expect this same standard to be applied next door.

This letter is to oppose a reduction in the 100-foot riparian setback and a 19-foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. We are in agreement with the letter sent by the Architectural Control Committee in this matter. Also, we would like to point out that the Local Coastal Plan Administrative Manual contains the following language:

6. Lot configuration and location of existing development. Where an existing subdivision or other development is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as buffer area for any new development permitted.

We also question why a waiver would be permitted regarding the riparian setback if this property is in a Waiver Prohibition Zone. If a waiver can be granted for the riparian setback perhaps a waiver can be granted to allow a NSF40 septic treatment system that would require less space than a mound.

Please deny this Use Permit as the owner can redesign the mound septic system and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

R. Brian Hines

RECEIVED

Robert J. and Jean K. Johnson 162 Calle del Sol Bodega Bay, CA 94923

DEC 1 0 2007

PERMIT AND FESSION OF SONOMA
COUNTY OF SONOMA

December 7, 2007

Cynthia Demidovich Sonoma County Permit and Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

Re:

Lot at 221 Los Santos Drive

Bodega Bay, CA File No.: PLP06-0070

The owner of 221 Los Santos Drive, Steven Star, is requesting that a variance be granted to reduce the riparian setback from the top of the creek bank. WE DO NOT SUPPORT THIS REQUEST!

We have lived by this creek since 1981 (26 years) and have witnessed the creek flood, the channel change, pollution of the creek, and the continuation of erosion. Lot 221 Los Santos is in the Coastal Zone which requires a 100 foot setback. If this requirement is changed it will create a precedent allowing other properties along this creek to further erode this waterway.

This creek has an ocean outflow and over the years the State has had to construct improvements to the outlet under Highway 1 due to the water flow. This creek also is home to many wild life species and any disturbance to the health of the creek would have a negative impact. This area is also in a flood plain. The creek bed is very deep and provides a wonderful habitat for the wild life.

The owners of this lot were aware of the building setback rules when they purchased the property and to change those rules and requirements now would not be in the best interest of the area.

Also, an illegal storage shed was recently constructed on Lot 221 and after homeowner complaints to the County and the Lot owner it has not been removed.

We respectfully request that you DO NOT APPROVE the application for a reduction of the riparian setback rules as they currently exist.

Sincerely,

obert J. and Jean K. Johnson

#### Cynthia Demidovich - re 221 Los Santos

From:

"Att Yahoo" <tfranzmann@sbcglobal.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 6:41 AM

Subject: re 221 Los Santos

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

#### Dear Ms. Demidovich:

We have just been made aware of the proposed changes referenced below. We do not approve. A letter via US mail will probably not get to you in time. We hope this email message will suffice.

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Marhomeowners have done.

Sincerely,

Thomas and Jane Franzmann Sereno Del Mar Homeowner 5280 Las Flores Road

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 8 of 38)

From:

Pat Ginochio <pgino519@yahoo.com>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 7:16:48 AM

Subject:

PLP06-0070, 221 Los Santos, Bodega Bay

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings.

Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

Paul & Patty Ginochio Sereno Del Mar Homeowner 360 Terra Verde Bodega Bay 925 370 1049

Never miss a thing. Make Yahoo your home page. http://www.yahoo.com/r/hs

CC:

<bri>drian@ncsr.com>

From:

BG <bglandscape@comcast.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 7:50:54 AM

Subject:

PLP06-0070, 221 Los Santos, Bodega Bay

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely, Ben Goyhenetche and Linda McBee

Sereno Del Mar Homeowners

From:

Brian Hansen User <bandjhansen@comcast.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 10:08:14 AM

Subject:

PLP06-0070

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

Laura Hansen Brian Hansen Elaine Hansen Alexander

Sereno Del Mar Homeowners at 5383 Los Flores, Bodega Bay

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 11 of 38)

### Cynthia Demidovich - PLP06-0070, 221 Los Santos, Bodega Bay

From:

"Tysinger & Associates" < Karen@tysingerengineers.us>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 10:53 AM

Subject: PLP06-0070, 221 Los Santos, Bodega Bay

CC:

"Gayle Goldstone" <rcoastal@comcast.net>, "Wiley Rob" <goldengate@comcast.net>

December 10, 2007

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

Re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

We oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings.

Please deny this Use Permit. We believe the owner should redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have been required to do.

Sincerely,

Karen and Robert Tysinger, Sereno del Mar Homeowners

2471 La Dia Court, Sereno del Mar, Bodega Bay

Karen Tysinger Tysinger & Associates Structural Engineers 212 Pacheco Avenue, Novato, CA 94947 Ph: (415) 898-6704 Fx: (415) 898-6724

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 12 of 38)

#### Cynthia Demidovich - PLP06-0070, 221 Los Santos, Bodega Bay 94923

**From:** "Jerry Ditto" <jditto@eichlerhomes.com>

To: <cdemidov@sonoma-county.org>

**Date:** 12/10/2007 10:55 AM

Subject: PLP06-0070, 221 Los Santos, Bodega Bay 94923

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

RE: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

J. R. Ditto

Sereno Del Mar Homeowner

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 13 of 38)

#### Cynthia Demidovich - 221 Los Santos, Bodega Bay

From:

"Gayle Goldstone" <rcoastal@comcast.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 1:13 PM

Subject: 221 Los Santos, Bodega Bay

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Cynthia:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. As a member of the CAC for GP2020 and serving on the committee for Biological Habitat/Riparian Corridors, I heard a lot of testimony from experts about this issue. I ask that the BZA honor the setbacks that have been set and not allow this. It is clear that the property owner can redesign their project so that no exception is necessary. Please urge the BZA to honor the setbacks as they exist; since I have concluded that the setbacks are woefully inadequate as they stand today.

The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limits on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as the rest of us have been required to do.

No exceptions, PLEASE!!! It degrades our community, our coast and our county.

Sincerely, Gayle Goldstone Property Owner, 5390 El Camino Bella, Sereno del Mar Member of Citizens' Advisory Committee, GP2020, Biological Habitat/Riparian Corridor Subcommittee

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 14 of 38)

#### Cynthia Demidovich - Opposition To Sereno Del Mar Permit Application

From:

"Bruce Olitzky" <Bruce@grantprosearch.com>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 2:37 PM

Subject: Opposition To Sereno Del Mar Permit Application

CC:

<bruceolitzky@earthlink.net>

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely, Bruce Olitzky 5430 El Camino Bella Bodega Bay, CA 94923 Sereno Del Mar Homeowner

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 15 of 38)

#### Cynthia Demidovich - 221 Los Santos - proposal to violate Local Coastal Plan/Sereno del Mar

**From:** "LINDA GARB" < garbled1@comcast.net>

To: <cdemidov@sonoma-county.org>

**Date:** 12/10/2007 3:48 PM

Subject: 221 Los Santos - proposal to violate Local Coastal Plan/Sereno del Mar

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

I am writing to oppose a reduction in the 100 foot riparian setback and the approval of a 19 foot high building at 221 Los Santos.

A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held.

The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have a 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

I see no reason why a reduction in the setback or an increase in height limit should be allowed for this individual homeowner when all others have had to comply with what are reasonable rules. This will set an unacceptable precedent for future home builders.

Sincerely, Robert and Linda Garb

130 Calle del Sol Sereno Del Mar Homeowners

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 16 of 38)

#### Cynthia Demidovich - Hearing for 06-0070, 221 Los Santos, Bodega Bay

From:

Clif <clifterry@yahoo.com>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 5:37 PM

**Subject:** Hearing for 06-0070, 221 Los Santos, Bodega Bay

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

We write this letter to oppose any reduction in the 100 foot riparian setback and to also oppose the proposed 19 foot high building at 221 Los Santos.

A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the drainage stream have been held. The valid reasons for the original setback have not changed.

The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. The neighborhood was designed to provide fair access to coastal views for all residents. We have obeyed the current height limit and we request that all new homeowners be held to the same standard. The proposed home is in our direct sight line to the coast -- every inch of increased height decreases our view of the ocean.

Please deny this Use Permit. The new homeowners should redesign their septic and home plans to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

Clifton and Teresa Gary 263 Los Santos Bodega Bay Sereno Del Mar Homeowners

Never miss a thing. Make Yahoo your homepage.

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 17 of 38)

#### Cynthia Demidovich - Sereno del Mar coastal subdivision - 221 los santos

From:

"MeL Konrad" <melk@adventoffice.com>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 5:10 PM

Subject: Sereno del Mar coastal subdivision - 221 los santos

CC:

<MarkNick@sonic.net>

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and the increase to a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely,

Sereno Del Mar Homeowner

Burchill/Konrad

5359 El Camino Bella

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 18 of 38)

#### Cynthia Demidovich - FW: PLP06-0070, 221 Los Santos, Bodega Bay

From:

"hannah young" <heygirl@sbcglobal.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/11/2007 7:54 AM

Subject: FW: PLP06-0070, 221 Los Santos, Bodega Bay

From: Wiley, Rob [mailto:RWiley@levi.com] Sent: Monday, December 10, 2007 2:30 PM

To: hannah young

Subject: FW: PLP06-0070, 221 Los Santos, Bodega Bay

**From:** Tysinger & Associates [mailto:Karen@tysingerengineers.us]

**Sent:** Monday, December 10, 2007 10:53 AM

**To:** cdemidov@sonoma-county.org **Cc:** Gayle Goldstone; Wiley Rob

Subject: PLP06-0070, 221 Los Santos, Bodega Bay

December 10, 2007

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

Re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

We oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings.

Please deny this Use Permit. We believe the owner should redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have been required to do.

Sincerely,

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

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Sereno Del Mar Homeowner Steven and Hannah Young 106 Calle Del Sol

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 20 of 38)

From:

"ctrimbach" <ctrimbach@earthlink.net>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 7:54:56 PM

Subject:

PLP06-0070

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings.

The rules which were govern the construction in this community were set to put reasonable limits on all construction within the community and maintain a scale of construction commensurate with the surroundings. Most of the homes in this development comply. Allowing variances is not only unsightly but is very unfair to those of us who have complied. If anyone chooses to build outside of those limitations they should find a building site in a location with less restrictive standards.

Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Sincerely, Charles Trimbach

Sereno Del Mar Homeowner

#### Cynthia Demidovich - re:221 LOS SANTOS PLP06-0070 BODEGA BAY

From:

<Larbresonoma@aol.com>

To:

<cdemidov@sonoma-county.org>

Date:

12/10/2007 7:56 PM

Subject: re:221 LOS SANTOS PLP06-0070 BODEGA BAY

MS. CYNTHIA DEMIDOVICH COUNTY OF SONOMA PERMIT & RESOURCES MANAGEMENT DEPT. 2550 VENTURA AVENUE SANTA ROSA, CA 95403

RE: PLP06-0070, 221 LOS SANTOS, BODAGA BAY

DEAR MS. DEMIDOVICH:

THIS LETTER IS TO OPPOSE A REDUCTION IN THE 100 FOOT RIPARIAN SETBACK AND A 19 FOOT HIGH BUILDING AT 221 LOS SANTOS. A REDUCTION IN THE 100 RIPARIAM SETBACK VIOLATES THE LOCAL COASTAL PLAN AND THE STANDARD TO WHICH ALL OTHER LANDOWNERS ALONG THE STREAM HAVE BEEN HELD TO. THE PROPOSED 19 FOOT BUILDING HEIGHT ALSO VIOLATES THE SERENO DEL MAR CC&R'S WHICH HAVE A 16 FOOT HEIGHT LIMIT ON ANY BUILDINGS. ALL PREVIOUS HOME BUILDERS HAVE HAD TO MAINTAIN THE 16 FOOT LIMIT. THERE SHOULD BE NO CHANGE ALLOWED AT THIS TIME, OR IN THE FUTURE. WE BUILT OUR HOUSE IN 1976 AND HAD TO MAKE MANY CONCESSION ON OUR HOUSE PLANS TO MAINTAIN THE DESIRED HEIGHT AND SETBACK REQUIREMENTS. IT SEEMS UNFAIR TO ALLOW A CHANGE OF THE CC&R'S AT THIS TIME.

PLEASE DENY THIS USE PERMIT AS THE OWNER CAN REDESIGN AND MAKE CONCESSION TO COMPLY WITH THE 100 FOOT SETBACK AND THE HEIGHT LIMITATION. THESE SET BACK AND HEIGHT LIMITS WERE ESTABLISHED FOR ALL OWNERS TO FOLLOW.

THIS IS OUR SECOND OBJECTION TO THIS REQUEST. ALSO PLEASE NOTE THAT THE OWNER OF THIS PROPERTY HAS PLACED A SMALL BUILDING ON THIS PROPERTY WHICH NEEDS TO BE REMOVED.

SINCERELY,

RAYMOND & SUZANNE LARBRE 5398 LIA DAI COURT BODEGA BAY, CA.

See AOL's top rated recipes and easy ways to stay in shape for winter.

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

(Page 22 of 38)

240 Los Santos Drive Bodega Bay, CA 94923

December 11, 2007

Ms. Cynthia Demidovich County of Sonoma Permit & Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

re: PLP06-0070, 221 Los Santos, Bodega Bay

Dear Ms. Demidovich:

This letter is to oppose a reduction in the 100 foot riparian setback and a 19 foot high building at 221 Los Santos. A reduction in the 100 riparian setback violates the Local Coastal Plan and the standard to which other landowners along the stream have been held. The proposed 19 foot building height also violates the Sereno Del Mar CC&Rs which have 16 foot height limit on such buildings. Please deny this Use Permit as the owner can redesign the septic and home to comply with the 100 foot setback and 16 foot height limit as other Sereno Del Mar homeowners have done.

Since the Sereno Del Mar Architectural Control Committee opposes this violation of the CC&R's and other homes to be built as well as existing homes have abided by the 16 foot limit, we ask that the same rules be applied to any future building projects. Also, land purchased in Sereno Del Mar is always with full disclosure of building packet and CC&R's. We see no reason to circumvent existing rules for anyone. Following the very basic CC&R guidelines and the time and effort spent by all involved should be minimal.

Sincerely,

David & Karen Kruppa

Sereno Del Mar Homeowners

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

Appeal from Brian Hines

#### Cynthia Demidovich - RE: PLP06-0070, 221 Los Santos, Bodega Bay

From:

"MarkNick" < MarkNick@sonic.net>

To:

<MarkNick@sonic.net>, <cdemidov@sonoma-county.org>

Date:

12/11/2007 5:49 PM

Subject: RE: PLP06-0070, 221 Los Santos, Bodega Bay

Ms. Demidovich,

I have obtained a copy of the staff report including the house plans. The copy is not very clear, but it appears that the actual height of the house is between 14' and 15', not the 19' as stated on the Sereno del Mar Architectural Control Committee letter.

If, in fact, the height is under 16', I withdraw my objection regarding the height.

However, I still object to special treatment being given to one adjacent homeowner over another, and object to allowing a 50' setback at 221 Los Santos unless the same 50' setback is allowed at 225 Los Santos. How is the riparian area only 150' downstream any less subject to intrusion then the area immediately to the east? Just at the owners at 225 Los Santos have been required to modify their home because if the 100' limit, the owners at 221 Los Santos could merely rotate their home 90 degrees and most likely meet the 100 foot setback.

Fair is fair. Rules should not be enforced against one taxpayer and waived for other taxpayers.

Mark Burchill 5359 El Camino Bella

**From:** MarkNick [mailto:MarkNick@sonic.net] Sent: Monday, December 10, 2007 6:11 PM

To: 'cdemidov@sonoma-county.org'

Subject: PLP06-0070, 221 Los Santos, Bodega Bay

Ms. Demidovich.

I am a homeowner in Sereno Del Mar, at 5359 El Camino Bella. When I remodeled my home in 2004, I was required to conform to all Sereno Del Mar architectural restrictions and to all requirements in the Local Coastal Plan. This included limiting the height of my home to 16' and keeping the footprint within the existing setback requirements.

I am strongly opposed to permitting a 19 foot elevation, in violation of both the Sereno Del Mar architectural restrictions and the Local Coastal Plan.

In addition, I understand that 221 Los Santos is being permitted to utilize only a 50' Riparjan setback, but the property next door at 225 Los Santos is being forced to utilize a 100' Riparian setback. Again, rules should be enforced equally. Either both properties should be allowed the same 50' setback, or both properties should be required to adhere to the 100' Riparian

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

(Page 24 of 38)

setback.

I request that you deny the use permit and require this owner to follow the same rules that others are required to obey.

Thank you for your consideration.

Mark Burchill 5359 El Camino Bella Bodega Bay, CA 94923

> Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR)

**Appeal from Brian Hines** 

(Page 25 of 38)

Brian and Jane Hines 1468 Funston Drive Santa Rosa, CA 95407

March 4, 2008

Ms. Cynthia Demidovich County of Sonoma PRMD 2550 Ventura Avenue Santa Rosa, CA 95403

Re: PLP06-0070, 221 Los Santos, Bodega Bay

#### Dear Cynthia:

We would like to thank the Board of Supervisors for hearing this appeal of the decision of the Board of Zoning Adjustment (BZA) regarding approval of a Use Permit for a reduction in the 100 foot Riparian Setback at 221 Los Santos Drive, Bodega Bay.

We ask the Board not grant this Use Permit and instead uphold the 100' Riparian Setback that is in the Local Coastal Plan(LCP) and that has been enforced at other similar lots such as the one we own next door at 225 Los Santos. We feel that denying this Use Permit and maintaining the 100-foot Riparian Setback is appropriate for the following reasons:

- 1) We were denied a 70 foot Riparian Setback by the BZA at a hearing on June 8, 2006 in spite of the fact that we submitted the same biological impact material that was submitted in this application. This included a report from Kjeldsen Biological Consulting dated August 26, 2004 and an email from the Department of Fish & Game biologist dated October 18, 2004. Both concluded that there would be no adverse biological impact from our requested 70-foot setback. If the "no biological impact" logic applies at 221 Los Santos then it should also have been applied at 225 Los Santos next door. We feel the same standard should apply for both lots, a 100 foot Riparian Setback.
- 2) ALL the wording in the LCP Administrative Manual Attachment M was not considered by the BZA. The applicant cites Attachment M in the Local Coastal Plan's Administrative Manual that seems to allow for a reduction in the Riparian Setback if there is no biological impact. For some reason this section of the Administrative Manual was unknown to the County during our BZA hearing in June of 2006. However, the same Attachment M also contains this language that would seem to deny a reduction in the setback requirement in this case, "6. Lot configuration and location of existing development: Where an existing subdivision or other development is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted." This more restrictive language would seem to deny a reduction in the 100-foot Riparian Setback in this case. Please see the LCP Administrative Manual Attachment M attached.

- 3) A letter from the Coastal Commission dated June 6, 2006 requiring a 100 foot Riparian Setback on our lot at 225 Los Santos was not considered at the BZA hearing for 221 Los Santos. This letter was not included in the December BZA hearing package. It indicates that unless an applicant can prove that a 100-foot Riparian Setback makes the lot unbuildable, the 100-foot setback is required. The Coastal Commission did submitted comments by phone to PRMD staff prior to the December BZA hearing. The Commission indicated that they thought the house could be redesigned to meet the 100-setback requirement. Unfortunately the comments were not in writing and the BZA chose to not consider them. Please see the Coastal Commission letter of June 6, 2006 regarding our lot at 225 Los Santos attached
- 4) Redesigning the home so that it does not extend into the 100 foot riparian setback had not been attempted. Also, a smaller one bedroom mound design rather than two-bedroom mound was not attempted. Also not considered was an advanced NSF40 septic pre-treatment system that might require less space than the conventional two-bedroom mound system proposed. We went to considerable trouble and expense to redesign our home and septic system to comply with the 100-foot Riparian Setback requirement.
- 5) The Sereno Del Mar Architectural Control Committee (ACC) opposes a reduction in the 100-foot setback. The ACC submitted a letter to BZA and testified at the hearing but their concerns were not considered. This was in spite of the fact that an approval letter from the ACC is required by the County during the Coastal Permit process.
- 6) The house design considered at the BZA hearing violates the Sereno Del Mar CC&Rs 16 foot height rule. There is a 16 foot height limit in the Sereno Del Mar CC&Rs which this house designs exceeds as it is 19 feet tall. Please see the Sereno Del Mar CC&Rs attached.
- 7) The Sereno Del Mar subdivision was originally designed with a lot layout such that homes would not block each other's ocean view. If setbacks are modified from one lot to another then this original subdivision planning will be defeated and property values decreased. If the 100 Riparian Setback is reduced at 221 Los Santos while a 100 foot setback is required at 225 Los Santos, the home at 221 Los Santos will block the ocean view of the home at 225 Los Santos. The 19 foot building height proposed just makes this situation worse.
- 8) 20 letters were received from Sereno Del Mar residents opposing a reduction in the 100-foot riparian setback at this property. While PRMD staff reported that this was "significant", the BZA chose to not consider the neighbor's concerns in their decision.

#### Ms. Cynthia Demidovich

March 4, 2008 Page 3

When we purchased our lot at 225 Los Santos in 2002 we were told by the Seller and the Real Estate Agent that it had a 50-foot setback. We were given a set of plans showing a house located on the lot with a 50-foot setback. In my investigations at PRMD before purchasing the lot I was told twice by the County staff that the lot had a 50-foot setback. I was told by County staff that if the area is not a Biological Resource Zone then the setback is 50 feet.

There is no indication on the parcel maps I was shown at the PRMD offices that there is a 100 foot Riparian Setback on this lot. Other hazards are mapped on these parcel maps such the Alquist-Priolo earthquake zones. This is very helpful when one is investigating the potential issues with a piece of property. Riparian setbacks should also be shown on the parcel maps available to the public at the PRMD offices so that potential Coastal Zone property purchasers can be properly informed.

To help avoid problems like this in the future I requested from PRMD's GIS mapping department a map of the Coastal Zone showing the 100-foot Riparian Setback areas from all blue line streams. The parcels are also shown this map so it can be used to inform potential purchasers of property in the Coastal Zone that there is a 100-foot Riparian Setback on parcels adjacent to blue line streams. I hope the County will utilize this map to properly inform prospective landowners about restrictions on property development in the Coastal Zone. A CD with these Coastal Zone maps is **attached.** 

Thank you considering this appeal and please deny a Use Permit that would allow a reduction in the 100 Riparian Setback at 221 Los Santos.

Sincerely,

R. Brian Hines

RRDIGHO

#### Criteria for Establishing Buffer Areas

A buffer area provides essential open space between the development and the environmentally sensitive habitat area. The existence of this open space ensures that the type and scale of development proposed will not significantly degrade the habitat area (as required by Section 30240). Therefore, development allowed in a buffer area is limited to access paths, fences necessary to protect the habitat area, and similar uses which have either beneficial effects or at least no significant adverse effects on the environmentally sensitive habitat area. A buffer area is not itself a part of the environmentally sensitive habitat area, but a "buffer" or "screen" that protects the habitat area from adverse environmental impacts caused by the development.

A buffer area should be established for each development adjacent to environmentally sensitive habitat areas based on the standards enumerated below. The width of a buffer area will vary depending upon the analysis. The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home or one commercial office building) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a much wider buffer area should be required. For this reason, the guideline does not recommend a uniform width. The appropriate width will vary with the analysis based upon the standards.

For a wetland, the buffer area should be measured from the landward edge of the wetland (Appendix D). For a stream or river, the buffer area should be measured landward from the landward edge of riparian vegetation or from the top edge of the bank (e.g., in channelized streams). Maps and supplemental information may be required to determine these boundaries. Standards for determining the appropriate width of the buffer area as follows:

- 1. <u>Biological significance of adjacent lands.</u> Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. That is, functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance would depend upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding or resting). This determination requires the expertise of an ecologist, wildlife biologist, ornithologist, or botanist who is familiar with the particular type of habitat involved. Where a significant functional relationship exists, the land supporting this relationship should also be considered to be part of the environmentally sensitive habitat area, and the buffer area should be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer should be extended from the edge of the wetland, stream or riparian habitat (for example) which is adjacent to the proposed development (as opposed to the adjacent area which is significantly related ecologically).
- 2. <u>Sensitivity of species to disturbance.</u> The width of the buffer area should be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination should be based on the following:
  - a. Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species.
  - b. An assessment of the short-term and long-term adaptability of various species to human disturbance.
- 3. <u>Susceptibility of parcel to erosion.</u> The width of the buffer area should be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

- 4. <u>Use of natural topographic features to located development.</u> Hills and bluffs adjacent to environmentally sensitive habitat areas should be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from environmentally sensitive habitat areas. Similarly, bluff faces should not be developed, but should be included in the buffer area.
- 5. <u>Use of existing cultural features to locate buffer zones.</u> Cultural features, (e.g., roads and dikes) should be used, where feasible, to buffer habitat areas. Where feasible, development should be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the environmentally sensitive habitat area.
- 6. Lot configuration and location of existing development. Where an existing subdivision or other development is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted. However, if that distance is less than 100 feet, additional mitigation measures (e.g., planting of native vegetation which grows locally) should be provided to ensure additional protection. Where development is proposed in an area which is largely undeveloped, the widest and most protective buffer area feasible should be required.
  - 7. Type and scale of development proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer area necessary to protect the environmentally sensitive habitat area. For example, due to domestic pets, human use and vandalism, residential developments may not be as compatible as light industrial developments adjacent to wetlands, and may therefore require wider buffer areas. However, such evaluations should be made on a case-by-case basis depending upon the resources involved, and the type and density of development on adjacent lands.

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#### CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT 45 FREMONT, SUITE 2000 SAN FRANCISCO, CA 94105-2219 VOICE AND TDD (415) 904-5260 FAX (415) 904-5400

June 6, 2006



Doug Zanini Sonoma County Permit and Resource Management Department 2550 Ventura Avenue Santa Rosa, CA 95403

RE: PLP05-0082 (Hines)

Dear Mr. Zanini:

Thank you for the opportunity to comment on the proposed residential development at 225 Los Santos Drive in Bodega Bay. The proposed development would be located within 100 feet of a mapped stream on the USGS 7.5 minute quadrangle map and would therefore be within the appeal jurisdiction of the California Coastal Commission.

Policy III-9 of the County's LCP states:

Prohibit construction of permanent structures within riparian areas as defined, or 100 feet from the lowest line of riparian vegetation, whichever is greater, except development dependent on the resources of the riparian habitat, including public recreation facilities related to the resource...

According to your staff report and addendum, the proposed residence would be conditioned to be located 80 feet from the edge of the riparian vegetation. Since residential development is not dependent on riparian resources, the proposed development would not be an allowable use within the 100-foot riparian buffer. Therefore, as conditioned, the proposed development would be inconsistent with the above LCP policy.

Since this proposed development would be in conflict with the LCP, the County should deny the development unless it could find that denial of this proposed development would deprive the applicant of all reasonable economic use of his property and result in a regulatory takings. In order for the County to proceed with a takings analysis, the applicant must first demonstrate that no feasible alternatives are available except to locate the proposed development within the 100-foot riparian setback area. However, the applicant has not provided an alternatives analysis that shows that no alternative locations or designs for the proposed residence are feasible. Based on the configuration and size of the lot, it appears that a residential development that would meet the riparian setback requirements could be easily accommodated on site. Therefore, it would be highly unlikely that the County would even need to pursue a takings analysis for the proposed development. As such, Commission staff recommends that the County consider the range of alternatives available to the applicant and only approve a development that would be consistent with all applicable policies of the LCP.

Exhibit No. 4 Appeal No. A-2-SON-08-010 (STEVEN STAR) X

In addition, your staff report mentioned that the Board of Zoning Adjustment (BZA) approved a use permit for a septic system on an adjacent parcel (UPE04-0008) that would be within 50 feet of the riparian area. Commission staff would like to note that since the BZA approval was for only a use permit and not a coastal development permit, no development on that property has received final approval under the LCP and Coastal Act. Any development proposed on that property would need to be carried out in a manner that would be consistent with all applicable LCP policies including the riparian setback standards.

We appreciate this opportunity to comment on the proposed development. Please feel free to contact me at (415) 904-5260 with any questions.

Sincerely,

YinLan Zhang Coastal Program Analyst North Central District X

n recorded mail to: MORTH COAST TITLE CHARANTY COMPANY P. O. Dex 1269 Santa Bosa, California

BOOK 2441 PAGE 250-175 NCTO CO JAN 22 1970

DECLARATION ESTABLISHING RESTRICTIONS L 49671

#### RECITALS

800: 2441 Aur 20

A. Declarants are the owners of the real property in the County of Sonoms, State of California, more particularly described as follows:

Being Lots One (1) through Fifty (50), se sumbered and dasignated upon the Hep entitled, "Sereno Del Her," filed in the Office of the County Recorder of Somone County on 22 of January, 1970, in Book 139 of Maps, Pages 12 and 13.

- 3. Owners are about to sall said property subject to conditions, restrictions and charges between it and the purchasers of said property thereof. and for the present and subsequent owners thereof.
- C. It is the purpose and intent of Owners that each and every lot sold should be deemed to be and construed as part of the whole trect of land above described, and that said conditions, covenants, restrictions and charges to be placed on any one lot or lots or portions thereof shall be for the benefit of said lot and all other lots and portions of said lots above described, and that all parcels and portions of said loss shall be subject to conditions. coverants, restrictions and charges for the common benefit of all said lots and the owners and grantees thereof present and subsequent as hereinefter specified.
- D. Said conditions, covenants, restrictions and charges are part of s common general plan or schedule of restrictions and governants with regard to said above described property and all of the lots therein contained are designed for the mutual bemufits of each parcel and lot therein, and in favor of each percel as against the other percels in said tract and also the owner of said parcels shall be subject to the conditions, covenants, restrictions and charges hereinafter set forth for the benefit of any lot or lots of said tract of land sold.
- E. It is proposed that said restrictions and covenants shall be included in any and all original conveyances and contracts relating to the sals or transfor of said property or any part thereof, and that such deed or conveyance of said tract or any part or portion thereof, sither directly or by reference, shall declare that the conditions, coverants, restrictions and charges contained therein should, as to each owner of any other lot in said treet of land, his heirs, executors, administrators, successors or assigns, operate as covenants running with the lands for the benefit of the remaining lots in said tract of their OWNETS.

#### RESTRICTIONS

1. All lots in the tract shall be known and described as single family residential lots, and no attructures shall be arected, eltered, placed or permitted to remain on any residential building plot other than one detached single family dwelling and a private garage for not more than three cars and other buildings

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incidental to residential use of the plut; Sixtern (16) feet in height above the natural grade of any lot or parcel upon which a structure is to be so placed, except where the construction of a residence in excess of sixteen (16) feet in height would not impair or obstruct the view of any other lot or parcel located within the subject subdivision hereunder. Prior to the comment ment of any structure that when complete would be in excess of sixteen (16) feet, written approval consenting to the creation of such a structure must be obtained from the "Architectural Control Committee" (hereinsfter created).

2. ARCHITECTURAL CONTROL. No building shall be erected, placed or altered on any loc until the construction plane and specifications and a plan showing the location of the attructura have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design and exterior color schemes with existing structures, and as to location with respect to topography and finish grade elevation. No fence or well shall be exected, placed or sitered on any lot nearer to any struct than the minimum building setback line as imposed by the recordation of the Subdivision Hap as aforementioned.

MEMBERSHIP. The Architectural Control Committee is composed of:

Charles Giovanetti

304 Rosemberg Building, Santa Rosa

Albino Barberis

4231 Alba Lane, Santa Ross

Francis Carrington

1303 Collage Avanua, Senta Rose

A majority of the committee way designate a representative to act for it. In the event of de.th or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this coverant. At any time, the then record owners of a Herjority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties provided at such time there has been a minimum of Ninety (90%) percent of the subject lots bereunder sold through appearate sales.

PROCEDURE. The committee's approval or disapproval as required in these covenants, shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within Thirty (30) days after plans and specifications have been submitted to it or in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval all not be required and the related covenants shall be deemed to have been fully complied with.

- 3. BUILDING LOCATION.
  - (a) No building shall be located on any lot mearer to the front lot line or mearer to the side atract line than the minimum building setback liner shown on the recorded plat.

- (b) No building shall be lossted mearer than 5 feet to an integrier lot line, except that no side yard shall be required for a garage or other permitted accessory building loosted 35 feet or more from the minimum building sathack line, no desiling shall be located on any interior lot nearer than 15 feet to the rear lot line.
- (c) For the purposes of this coverent, eaves, steps, and open perches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.
- 4. We residential attracture shall be areated or placed on any building plot, which plot has an area of less than 6,000 square feet nor width of less than 60 feet at the front building secback line. A residence may be exected or placed on any original lot as shown on the recorded plat, provided said residence to be drected or placed on any original lot is within the "Building Site Area" as set out upon the recorded plat.
- SEPTIC TANKS. Any septic tank or septic system installation must comply with the Sonous County Health Department specifications and with the provisions of Ordinance No. 798 of Sonous County.
- f. FUEL STORAGE. The placement of any fuel tank, gas trak, or any similar storage famility shall be made in such a manner so as not to appear unsightly or to obstruct or impair the view of any other lot in said subdivision.
- 7. MEIGHTS OF TREES. There shall not be planted nor placed upon any lot in sold subdivision trees, shrubbery, or any other type of foliage which when grown would be of an unusual height or of such obese density as to obstruct or impair the view of any other lot in said subdivision.
- 8. All power and communication conductors shall be placed underground between the street boundary as determined by the utility company and the service point on the dualling unit.
- 9. No fence, well, hadge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting than at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property linus extended. The same sightline limitations shall apply on any lot within 10 test from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.
- 10. Where rear yards of any lots abut on any dedicate streats, county made or State highways, any access to said lots from these roads shall be prohibited, and no driveways, garages, etc., shall be constructed to use the rear

yards 48 access.

- II. No old drillings, ail development operations, oil refining, querrying or mining operations of any kind shall be permitted upon or in any lot, Nor shall oil wells, tanks, tunnels, wineral excevations or shefts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be expected, maintained or permitted upon any lot.
- 12. No lot shall be used or maintained as a dumping ground for rubbieh, trash, parhage or other wasta shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such meterial shall be kept in a clean and sanitary condition.
- 13. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five equate feet advertsing the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales pariod.
- 14. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall enything be done thereon which may be or become an annoyance or nuisance in the neighborhood.
- 25. No trailer, basement, tent, shack, garage, been or other authoriding exected in the tract shall at any time be used as 4 residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- 15. No mercentile, commercial or manufacturing business of any kind shall be uninterined or operated on any of said single family residential locs, nor shall any nuisance be maintained thereon.
- 17. Easements are reserved as shown on the recorded plat for utility installation and maintenance.
- 18. No fowl, rabbits, goats, hogs, cous, horses or creatures of any kind other than usual household pets, such as caged birds, cats and dogs in usual and reasonable numbers, shall be kept on any premises in this subdivision. The foregoing is incended to exclude the keeping of any such pets in numbers ordinarily objectionable in a closely built-up residential section.

in a ciosely built-up residential section,

19. The portion of any lot or plot in front of the front line of the building thereon shall be kept from at all times from rubbish, litter and weeds, and with the exception of walks, driveway or pation, shall be properly cultivated to grow and esimilar trees, plants, flowers, shrubs or laws. No building materials, fixeplace wood, at catara, or other substances shall be piled, placed or otherwise stored on such portion of any lot after the completion of the resilence there. for more than 48 hours, nor shall any boats, automobile, truck, trailer of any nature, or other vehicle or equipment be left on any area thereof, nor shall any housetrailer, host or boats, truck or other communical type vehicle be stored or perked upon the driveway, nor shall any smjor mechanical repairs be made to any vehicle outside the deveted area of the garage. Nothing herein shall prevent the perking of private passenger vehicles upon the driveway imming to the dwalling. In addition, heavy or communical vehicles, housetrailers, trailers, boats and other similar equipment shall not be parked or stored on the etreet adjacent to the lot line.

 If local soning ordinances are now or shall be hereafter more restrictive, said ordinance shall take precedence over these restrictions.

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- 21. These covenants are to run with the land and shall be binding on all the porties and all persons claiming under them until January 1, 2000, at which time said movements shall automatically be extended for successive periods of ten (10) years, unless by a vote of a majority of the them owners of the lots, it is agreed to change said covenants.
- 27. It the parties hereto, or any of them or their heirs or sseigns shall violate or attempt to violate any of the townsate herein, it shall be lawful for any other person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law inequity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so deing or to recover damage or other dues from such violation,
- 23. Invalidation of any of these covanance by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.
- Z4. Rose of the provisions of this declaration shall in any way radice the security or defeat or render invalid the lien of any mortgage or deed of trust covering the real property shown on said map or any part thereof. It is agreed, however, that if any portion of said property is sold under foreclosure of any murtgage or under provisions of any deed of trust, any purchaser or purchasers under eales made by reasons of such foreclosure or by reason of such sale under any deed of trust shell hold any and all property so purchased to all rf the terms and conditions of this declaration.

Dated: March 27, 1969

IN WITHESS WHEREOF, the parties hereto have hereunto set their hands on the day and year first above written.

OCEAN INVESTMENTS, a Limited Pertnership

STATE OF CALIFORNIA COUNTY OF SUNCHA

On Herch 27, 1969, before me, the undersigned, a Notary Public in and for the said State, personally appeared FRANCIS CARRINGTON, known to me to be a general partner of the pertnership that executed the within instrument and acknowledged to me that such partnership executed the manu.

-3-

WITHESS we hand and official seal

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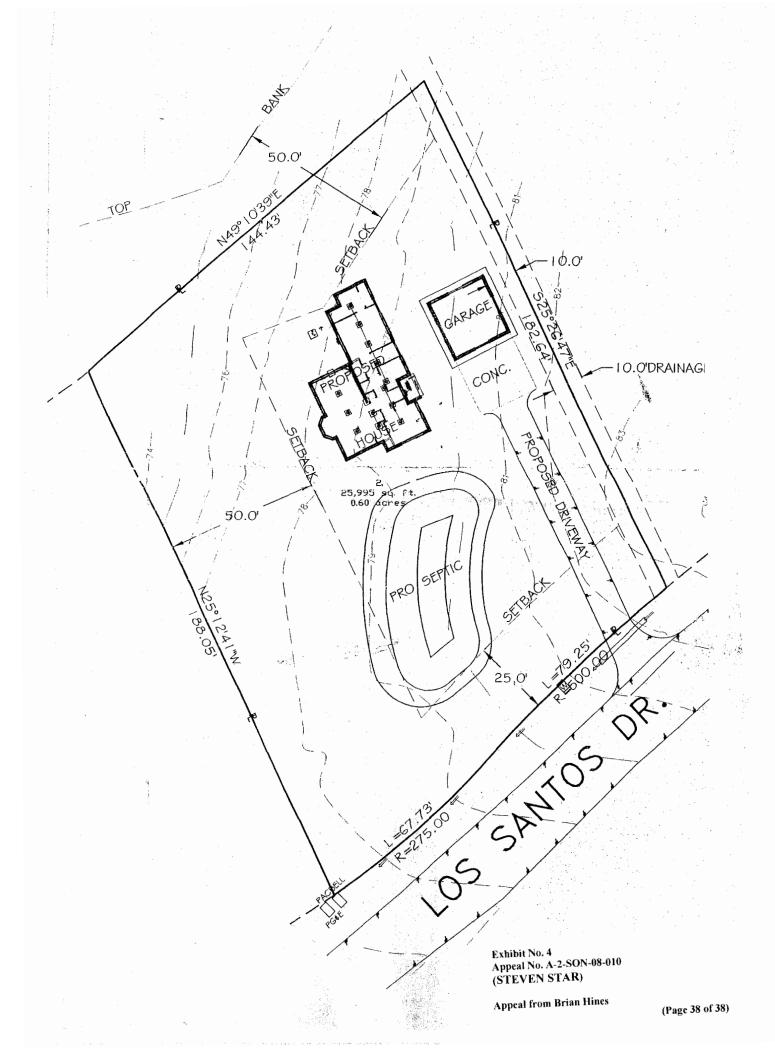
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# Notice of Final Action 2-50N-0+-03 Con a Coastal Permit RECEIVED

MAR 2 0 2008

Sonoma County Permit and Resource Management Department

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

Date: March 18, 2008

File:

PLP06-0070

Applicant:

Steven Star

Address: City, State, Zip:

17274 Leisure Lane

State, Zip.

Nevada City CA 95959

Planner:

Cynthia Demidovich

This notice is being distributed to the Coastal Commission and those who requested notice. The following project is located within the Coastal Zone. A project decision has been completed.

Project Description:

Request a Coastal Permit to construct a 1,208 square foot single family residence with a 400 square foot detached garage and a Use Permit to allow a reduction in the riparian corridor setback from 100 feet to no less than 50 feet as measured from the top of the bank to any development on a 26,825 square foot parcel.

Project Location:

221 Los Santos Drive, Bodega Bay

Assessor's Parcel Number:

101-173-002

X APPROVED by the Board of Supervisors on March 11, 2008.

Conditions of Approval: See attached.

Findings: The project, as described in the application and as conditioned, conforms with the plans, policies, requirements and standards of the Sonoma County Coastal Program. Specifically:

See the attached findings approved by the Board of Supervisors (Resolution Number 08-0222) on March 11, 2008.

X Appealable. The decision may be appealed in writing to the State Coastal Commission within ten (10) working days. (Local appeal to the Board of Supervisors must be accomplished first.)

Address:

California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 94105-2219

Exhibit No. 5
Appeal No. A-2-SON-08-010
(STEVEN STAR)
Sonoma County
Notice of Final Local Decision (Page 1 of 7)

#67 Resolution Number 08-0222

County of Sonoma Santa Rosa, California

March 11, 2008 PLP06-0070 Cynthia Demidovich

RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, GRANTING A COASTAL PERMIT TO CONSTRUCT A 1,208 SQUARE FOOT SINGLE FAMILY RESIDENCE WITH A 400 SQUARE FOOT DETACHED GARAGE AND A USE PERMIT TO ALLOW A REDUCTION IN THE RIPARIAN CORRIDOR SETBACK FROM 100 FEET TO NO LESS THAN 50 FEET AS MEASURED FROM THE TOP OF THE BANK TO ANY DEVELOPMENT ON A 26,825 SQUARE FOOT PARCEL LOCATED AT 221 LOS SANTOS DRIVE, BODEGA BAY; APN 101-173-002.

WHEREAS, the applicant, Steven Star, filed a Coastal Permit application to construct a 1,208 square foot single family residence with a 400 square foot detached garage and a Use Permit application to allow a reduction in the riparian corridor setback from 100 feet to 50 feet as measured from top of bank to any development with the Sonoma County Permit and Resource Management Department (PRMD) on a 26,825 Square foot parcel located at 221 Los Santos Drive, Bodega Bay; APN 101-173-002; Zoned RR (Rural Residential), CC (Coastal Combining), B7 (Frozen Lot Size), G (Geologic Hazard Combining), Z (Second Dwelling Unit Exclusion); Supervisorial District No 5; and

WHEREAS, PRMD staff determined that this project qualifies for categorical exemption from the California Environmental Quality Act (CEQA) under section 15303(a) of the state CEQA Guidelines; and

WHEREAS, at its regularly scheduled meeting on December 13, 2007, the Board of Zoning Adjustments, with a 4-1 vote, approved the request; and

WHEREAS, on December 24, 2007, an appeal of the approval was filed with the Board of Supervisors by Brian Hines; and

WHEREAS, in accordance with the provisions of law, the Board of Supervisors held a public hearing on March 11, 2008, at which time all interested persons were given an opportunity to be heard.

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

- The Sonoma County Coastal Zoning Code (Section 26C-91(a)) allows permitted uses of the Rural Residential District to be located within a "sensitive area" as defined in the Coastal Zoning Code subject to approval of a Use Permit, provided that the project can be found consistent with the Local Coastal Plan. The project is consistent with the Local Coastal Plan as further described in the following findings.
- 2. A "Riparian Corridor Determination" study was prepared by Kjeldsen Biological Consulting (dated December 4, 2003). The study concludes that due to the site conditions and habitat present, a 50 foot setback is adequate to protect the riparian resources, and will not significantly degrade the riparian habitat for the following reasons: Exhibit No. 5

Exhibit No. 5
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Resolution # 08-0222 March 11, 2008 Page 2

- a) The riparian corridor and riparian vegetation is confined to the incised channel of the drainage.
- b) The presence of a Coyote Brush cover on the upland bank between the riparian corridor and riparian vegetation will provide a buffer. This upland shrub vegetation will provide a continuous buffer along the northern property line.
- 3. The project is consistent with the Local Coastal Plan in that Section III-12 (#9) of the plan states that development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade riparian areas, and shall be compatible with the continuance of the riparian habitat. Based on the biotic study prepared for this project and the analysis included in the Board of Supervisors' March 11, 2008 Staff Report, no riparian habitat will be impacted as a result of the setback reduction to no less than 50 feet from top of bank. Therefore, the project can be found consistent with the Local Coastal Plan.
- 4. The proposed project meets all of the required standards contained within Attachment "M" of the Local Coastal Plan Administrative Manual which allows a reduction in the setback to no less that 50 feet for the following reasons: a protective buffer will be located between the proposed project and the riparian habitat; the buffer will consist of an existing cover of Coyote Brush which is not considered riparian vegetation; and the buffer provides protection to the habitat from adverse impacts caused by the development.
- 5. Per the Regulations for On-Site Sewage Disposal in Sonoma County, the two-bedroom septic system designed for the subject residence must be located at least 100 feet from riparian vegetation, 10 feet from the east and south property lines, 25 feet from the west property line and 10 feet from the residence and garage. The only suitable location for the septic system is on the front portion of the parcel, thus dictating the placement of the single family dwelling at the rear of the subject lot.
- 6. The modestly sized, 1,208 square foot single family residence and 400 square foot detached garage are located in a subdivision with an average residential size of 1,689 square feet on Los Santos Drive. The building envelope for the subject lot, as described on the recorded Subdivision Map for the Sereno Del Mar Subdivision, requires a 50-foot structural setback from the west property line and a 30-foot setback from the front property line. Given the 100-foot riparian setback, the Subdivision Map building envelope, and the setback standards for the two-bedroom septic system, there are significant constraints on the development of a residence on the subject lot.
- 7. Given the significant development constraints imposed on the subject site lot by riparian, side yard and septic setback requirements, strict compliance with the 100-foot riparian setback would deny the owners the reasonable use of their property and result in a taking.
- 8. This project is categorically exempt from CEQA under Section 15303(a) of the State CEQA Guidelines as it will not have a significant effect on the environment because the proposed site improvement is a single family dwelling and the biological survey determined that the proposal would not affect sensitive biological resources.

BE IT FURTHER RESOLVED that the Supervisors approves the Coastal Permit and Use Permit to reduce the riparian corridor setback as determined to be the minimum reduction necessary to allow construction of a 1,208 square foot single family residence with a 400 square foot detached garage. The riparian corridor setback shall be no less than 50 feet as measured from top of bank to any development subject to the conditions in Exhibit "A", attached hereto; and incorporated herein by this reference.

Exhibit No. 5
Appeal No. A-2-SON-08-010
(STEVEN STAR)
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Resolution # 08-0222 March 11, 2008 Page 3

BE IT FURTHER RESOLVED that the Use Permit approved herein shall supercede all previous Use Permits for the subject lot, including UPE04-0008.

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: Absent

Smith: Aye

Kelley: Aye

Reilly: Aye

Kerns: Aye

Ayes: 4

Noes: 0

Absent: 1

Abstain: 0

SO ORDERED.

### EXHIBIT A Final Conditions of Approval

Date:

March 11, 2008

File No.:

PLP06-0070

Applicant:

Steven Star

APN:

101-173-002

Address:

221 Los Santos Drive, Bodega Bay

**Project Description:** Request for a Coastal Permit to construct a 1,208 square foot single-family residence with a 400 square foot detached garage and a Use Permit to reduce the riparian corridor setback from 100 feet to 50 feet as measured from top of bank to any development.

Prior to commencing the use, evidence must be submitted to the file that all of the following nonoperational conditions have been met.

#### BUILDING:

1. The applicant shall apply for and obtain building related permits from the Permit and Resource Management Department (PRMD). The necessary applications appear to be, but may not be limited to, site review, building permit, and grading permit.

#### PLANNING:

"The conditions below have been satisfied" BY	DATE
---	------

- 2. This Coastal Permit approves the construction of a 1,208 square foot single-family residence and a 400 square foot detached garage as described in the project plans titled "General Architectural & Project Notes" and dated July 20, 2006 and "Septic Site Plan" dated July 18, 2005. The Use Permit is approved to reduce the riparian corridor setback from 100 to 50 feet as measured from top of bank to any development. The riparian setback applies to all on-site development including decks, patios, accessory structures, paving or other hard surface materials, landscaping, and trails. The riparian setback area shall remain natural and in an undisturbed state. The approved riparian set back line shall be clearly depicted on all septic, grading and building permit plans necessary for the development of this site. This Coastal Permit and Use Permit shall supercede all previous Coastal and Use Permits on this parcel, including UPE04-0008.
- 3. The use of herbicide and pesticide applications are prohibited outside of all structures.
- 4. An Erosion Control Plan is required, and shall include all pertinent details, notes and specifications to minimize the projects's impact to the riparian area. The Erosion Control Plan shall be approved by the Drainage Review Section prior to grading or building permit issuance.
- 5. The applicant shall pay all applicable development fees prior to issuance of building permits.
- 6. Development on this parcel is subject to the Sonoma County Fire Safe Standards and shall be reviewed and approved by the County Fire Marshal/Local Fire Protection District. Said plan shall include, but not be limited to: emergency vehicle access and turn-around at the building site(s), addressing, water storage for fire fighting and fire break maintenance around all structures. Prior to occupancy, written approval that the required improvements have been installed shall be provided to the Permit and Resource Management Department from the County Fire Marshal/Local Fire Protection District.
- 7. The applicant shall include these Conditions of Approval on a separate sheet(s) of blueprint plan sets to be submitted for building and grading permit applications.
- 8. All building and/or grading permits shall have the following note printed on plan sheets:

"In the event that archaeological features such as pottery, arrowheads, midden or culturally modified soil deposits are discovered at any time during grading, scraping or excavation within the property, all work shall be halted in the vicinity of the find and County PRMD - Project Review staff

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Appeal No. A-2-SON-08-010
(STEVEN STAR)
Sonoma County
Notice of Final Local Decision (Page 5 of 7)

shall be notified and a qualified archaeologist shall be contacted immediately to make an evaluation of the find and report to PRMD. PRMD staff may consult and/or notify the appropriate tribal representative from tribes known to PRMD to have interests in the area. Artifacts associated with prehistoric sites include humanly modified stone, shell, bone or other cultural materials such as charcoal, ash and burned rock indicative of food procurement or processing activities. Prehistoric domestic features include hearths, firepits, or house floor depressions whereas typical mortuary features are represented by human skeletal remains. Historic artifacts potentially include all by-products of human land use greater than 50 years of age including trash pits older than fifty years of age. When contacted, a member of PRMD Project Review staff and the archaeologist shall visit the site to determine the extent of the resources and to develop and coordinate proper protection/mitigation measures required for the discovery. PRMD may refer the mitigation/protection plan to designated tribal representatives for review and comment. No work shall commence until a protection/mitigation plan is reviewed and approved by PRMD - Project Review staff. Mitigations may include avoidance, removal, preservation and/or recordation in accordance with California law. Archeological evaluation and mitigation shall be at the applicant's sole expense.

If human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and PRMD staff, County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to be Native American, the Native American Heritage Commission must be contacted by the Coroner so that a "Most Likely Descendant" can be designated and the appropriate provisions of the California Government Code and California Public Resources Code will be followed."

- 9. Prior to activation of the Coastal Permit, the applicant shall submit the building design to Sereno del Mar Architectural Review Committee for review. Any changes to the design or development on the site is subject to the final review and approval by the PRMD Project Review Division.
- 10. 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 up to 19 feet 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 building height shall be 16 feet.
- 11. All utilities shall be placed underground.
- 12. All exterior light fixtures shall be shielded to prevent off-site light and glare. Exterior light fixtures shall not directly shine off the subject property or into the night sky.
- 13. All exterior materials shall be non-glare and non- reflective materials.
- 14. This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule, or regulation shall be a violation of the Use Permit, subject to revocation.
- 15. Any proposed modification, alteration, and/or expansion of the use authorized by this Use Permit/Coastal Permit shall require the prior review and approval of the Permit and Resource Management Department or the Board of Zoning Adjustments, as appropriate pursuant to Section 26C-349 of the Sonoma County Code. Such changes may require a new or modified Use Permit/Coastal Permit and additional environmental review.
- This permit shall be subject to revocation or modification by the Board of Zoning Adjustments if:

  (a) the Board finds that there has been noncompliance with any of the conditions or (b) the Board finds that the use for which this permit is hereby granted constitutes a nuisance. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to Section 26C-335

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(STEVEN STAR)
Sonoma County
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Conditions of Approval - PLP06-0070 March 11, 2008 Page 3

and 26C-335.2 of the Sonoma County Code.

- 17. This Use Permit/Coastal Permit shall expire within two (2) years from its date of approval unless the permit has been used; provided however, that upon written request by the applicant prior to the expiration of the two (2) year period, the permit approval may be extended for not more then one(1) year by the authority which granted the original permit pursuant to Section 26C-348 of the Sonoma County Code.
- 18. Affordable housing requirements apply to the project pursuant to Section 26-89 of the Sonoma County Code.
- 19. This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule, or regulation shall be a violation of the Use Permit, subject to revocation.
- 20. The Director of PRMD is hereby authorized to modify these conditions for minor adjustments to respond to unforeseen field constraints provided that the goals of these conditions can be safely achieved in some other manner. The applicant must submit a written request to PRMD demonstrating that the condition(s) is infeasible due to specific constraints (e.g. lack of property rights) and shall include a proposed alternative measure or option to meet the goal or purpose of the condition. PRMD shall consult with affected departments and agencies and may require an application for modification of the approved permit. Changes to conditions that may be authorized by PRMD are limited to those items that are not adopted standards or were not adopted as mitigation measures or that were not at issue during the public hearing process. Any modification of the permit conditions shall be documented with an approval letter from PRMD, and shall not affect the original permit approval date or the term for expiration of the permit.

The owner/operator and all successors in interest, shall comply with all applicable provisions of the Sonoma County Code and all other applicable local, state and federal regulations.



## COUNTY OF SONOMA PERMIT AND RESOURCEMANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Basa, CA 95403 (707) 565-1900 MAR HAX (707) 565-1103

CALIFORNIA COASTAL COMMISSION

DATE:

March 11, 2008 at 2:30 p.m.

TO:

Board of Supervisors

FROM:

Cynthia Demidovich, Project Planner

SUBJECT:

PLP06-0070, Steven Star

#### Action of the Board of Zoning Adjustments:

At its regularly scheduled meeting on December 13, 2007, the Board of Zoning Adjustments, with a 4-1 vote, approved the request for a Coastal Permit to construct a 1,208 square foot single-family residence with a 400 square foot detached garage and a Use Permit to reduce the riparian corridor setback from 100 feet to 50 feet as measured from top of bank to any development requested by Steven Star for property located at 221 Los Santos Drive, Bodega Bay; APN 101-173-002; Zoned RR (Rural Residential), CC (Coastal Combining District), B7 (Frozen Lot Size), G (Geologic Hazard Combining District), Z (Second Dwelling Unit Exclusion); Supervisorial district No 5.

On December 24, 2007, an appeal of the decision was filed with the Board of Supervisors by Brian Hines.

#### Background:

The applicant proposes to locate a new 19 foot tall, 1,208 square foot single family dwelling and a 400 square foot detached garage on the project site. The residence is proposed to be sited approximately 50 feet from the edge of riparian vegetation located on the adjacent "Natural Drainage Easement" parcel to the north. The development includes appurtenant utility connections and development of a two bedroom septic system with a 100% expansion area. The proposed septic system would occupy a large portion of the front half project site leaving a very limited area to construct a residence given the required riparian, side yard and septic setback requirements.

Section III-12 of the Local Coastal Plan (LCP) prohibits construction of permanent structures within riparian areas as defined or requires a 100' setback from the lowest line of riparian vegetation, whichever is greater unless the setback would result in a regulatory taking. Section III-12 of the Coastal Plan also states that development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the riparian habitat.

A "Riparian Corridor Determination" study was prepared by Kjeldsen Biological Consulting. The study found that riparian vegetation was present along the banks of the stream and adjacent to

the top of the bank is a dense thicket of Coyote brush. Coyote Brush is not considered to be a riparian plant. Coyote Brush extends from the top of the bank approximately 50 feet wide, creating a buffer between the proposed building site and the riparian habitat. The riparian vegetation is located approximately 50 feet from the proposed building site and 30 feet from the edge of the property line. The study concluded that due to the site conditions and habitat present, a 50 foot setback is adequate to protect the riparian resources because the riparian vegetation is confined to the incised channel of the drainage. The study recommended that no Coyote Brush be removed as a part of site development to provide a buffer for the riparian area, and the riparian setback area shall remain in a natural and undisturbed state. Use of herbicide and pesticide will be prohibited within the buffer area. Staff received correspondence (dated July 12, 2004) from the California Department of Fish and Game (CDF) who agrees that the reduction in the setback from 100 feet to 50 feet is justified. CDF determined that this habitat is considered ephemeral in nature and supports no fish or other aquatic population.

#### ISSUES DISCUSSED AT THE PUBLIC HEARING

Issue #1: Riparian Corridor Setback Reduction

#### Discussion

Prior to the scheduled public hearing staff received 19 letters of opposition to the proposed project. The appellant, Brian Hines and also a member of the Sereno Del Mar Architectural Control Committee, spoke in opposition of the proposed project. The concern was that a reduction in the 100-foot riparian setback would violate the Local Coastal Plan (LCP) and other property owners along the natural drainage easement have been required to meet the 100-foot setback standards. Maggie Briare, Sereno Del Mar Architectural Control Committee member, thought the project could be redesigned to meet the LCP standards. The appellant, indicated that his request on a neighboring property (PLP00-0082) to also reduce the riparian setback was denied by the Board of Zoning Adjustments on June 8, 2006, and he was required to redesign his single family dwelling to meet the 100-foot setback and this request to reduce the setback should also be denied. Hines stated that a reduction in the 100-foot setback only applies if denying the reduction in the setback would result in a regulatory taking.

The applicant explained that prior to his purchase of the subject property, a previously approved Use Permit (UPE04-0008) allowed a reduction in the 100-foot setback but that Use Permit expired. The applicant indicated that the septic system had been redesigned to reduce it from a three bedroom system to a two bedroom system which would require less space for the leach field on-site. He explained that his property was relatively small and he may not be able to redesign the project, to comply with the 100-foot setback.

The applicant's attorney further explained that the adjacent property owner (the appellant) was denied a reduction in the 100-foot setback because the adjacent parcel is 5,425 square feet larger than the applicant's parcel, and the proposed single family dwelling and garage was 4,414 square feet in size compared to the applicant's 1,745 square foot single family dwelling and garage. (The subject site is 26,825 square feet in size). He indicated that the project on the adjacent parcel could be redesigned to meet the 100-foot setback because the larger parcel allowed more flexibility in design. He also explained that a biotic study had been prepared for

the proposed project and the study indicated that Coyote Brush extends from the top of the bank approximately 50 feet wide, creating a buffer between the proposed building site and the riparian habitat. The off-site riparian vegetation is located approximately 50 feet from the proposed building site and 30 feet from the edge of the northernly property line. The study concluded that due to the site conditions and habitat present, a 50-foot setback is justified and adequate to protect the riparian resources because the riparian vegetation is confined to the incised channel of the drainage. In addition, he indicated the California Department of Fish and Game approved the reduction in the 100-foot setback since the stream did not support fish or other aquatic population.

#### Resolution

The Board of Zoning Adjustments felt the intent of the LCP and the Coastal Zoning Ordinance was to allow a reduction in the 100-foot setback only when the property owner would be deprived of all reasonable economic use of the property and result in a regulatory taking. However, the Board of Zoning Adjustments felt that the applicant did not explore alternative design options for the proposed development to maximize the required setback. Consequently, the Board of Zoning Adjustments approved the Coastal Permit/UsePermit but directed the applicant to redesign the project to maximize the setback area to the extent practical or otherwise justify the maximum reduction in setback standards. Condition #2 was modified as follows (underline is modified language):

This Coastal Permit and Use Permit approves a reduction of the 100-foot stream setback for construction of a 1,208 square foot single-family residence and a 400 square foot detached garage. This Coastal Permit and Use Permit approves the construction of a 1,208 square foot single-family residence and a 400 square foot detached garage, to be located a minimum of 50 feet as measured from the top of bank, to any development, from the waterway located off-site and north of the subject parcel unless otherwise modified by these conditions. The applicant shall exhaust all possibilities to maximize the riparian setback to provide an additional 25 feet of buffer area (75 feet total) by redesign of the residence and/or modification of the septic design. The applicant shall maximize the riparian setback by redesign of the residence and/or modification of the septic design. The 100-foot setback may be reduced by the minimum necessary to allow construction of the 1,208 square foot residence and garage but shall be no less than 50 feet as measured from the top of the bank. The applicant shall provide evidence acceptable to PRMD - Project Review staff to determine the minimum setback allowed. either the feasibility or infeasibility of the increased setback beyond 50 feet of the top of bank. The riparian setback applies to all on-site development including decks, patios, accessory structures, paving or other hard surface materials, landscaping, and trails. The riparian setback area shall remain natural and in an undisturbed state. This riparian set back line shall be established on all permits and plans and future Coastal Permit application for the single family residence. This Use Permit shall supercede all previous Use Permits on this parcel, including (UPE04-0008).

Issue #2: Building Height

#### Discussion

The applicant's attorney explained that the Zoning Code allows a maximum 16-foot high building but the code grants the Sereno Del Mar Architectural Control Committee authority to

approve an increase in height up to 24 feet for structures proposed to be constructed within the subdivision. The applicant requests approval for a 19-foot high residence.

The appellant, as well as several letters of opposition, object to the proposed 19-foot high residence as that height is not in conformance with the Sereno Del Mar Conditions, Covenants and Restrictions (CC&Rs). Maggie Briare, member of the Sereno Del Mar Architectural Control Committee stated that there were single family dwellings in the subdivision that were in excess of 16 feet but these structures were located on perimeter parcels when views were not compromised on adjacent parcels.

#### Resolution

The Board of Zoning Adjustments was concerned that the conditions as worded could give the Sereno Del Mar Architectural Control Committee authority over the entire Coastal Permit. The Board of Zoning Adjustments modified the following Condition of Approval to allow their review and approval of the exception to height limits, but not approval authority of the Coastal Permit by the Sereno Del Mar Architectural Control Committee:

Condition # 10. 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 up to 19 feet 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 building height shall be 16 feet.

#### **ISSUES RAISED WITH APPEAL**

#### Issue #1: Riparian Corridor Setback Reduction

The appellant is concerned that his request for a reduced riparian setback (PLP00-0082) was denied by the Board of Zoning Adjustments on June 8, 2006, and he was required to redesign his single family dwelling to meet the 100-foot setback and this request to reduce the setback should also be denied.

He feels that a reduction in the 100-foot riparian setback would violate the LCP and property owners along the natural drainage easement have been required to meet the 100-foot setback standards.

The Local Coastal Plan (LCP) allows for a reduction in riparian setbacks if the applicant can demonstrate that a 100 foot setback is unnecessary to protect the resource of the habitat area, per Section III-12 and Attachment "M" of the LCP. Furthermore, the Board of Zoning Adjustments (BZA) approved the reduction if the applicant could adequately demonstrate that a setback less than 100 feet is necessary to accommodate the modest size home.

The appellant has stated that Sereno Del Mar is located within a "Waiver Prohibition Zone." However, this is an incorrect statement. As stated in the background section of this report, the LCP includes provisions for exceptions to riparian setbacks which is the subject of this Use Permit application. Because this site is potentially visible from Highway 1, a Coastal Permit is required and is also included as part of this application. Both of these applications are clearly permitted by the Local Coastal Plan.

Exhibit No. 6
Appeal No. A-2-SON-08-010
(STEVEN STAR)
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### Issue #2: Building Height

The appellant objected to the proposed 19 foot height limit as that height limit was not in conformance with the Sereno Del Mar CC&Rs.

The Zoning Code allows a maximum 16-foot high building but the code grants the Sereno Del Mar Architectural Control Committee authority to approve an increase in height up to 24 feet for structures proposed to be constructed within the subdivision. The applicant requests approval for a 19-foot high residence. There are several structures within the Sereno Del Mar subdivision that are constructed higher than 16 feet. The applicant should provide evidence that the proposed 19 foot high structure has been approved by the Sereno Del Mar Architectural Control Committee.

#### List of Attachments:

Draft Board of Supervisors Resolution

EXHIBIT A Draft Conditions of Approval

EXHIBIT B: Appeal Form

EXHIBIT C: Board of Zoning Adjustments Resolution No. 07-026

EXHIBIT D: Board of Zoning Adjustments Minutes dated December 13, 2007

EXHIBIT E: Board of Zoning Adjustments Staff Report dated December 13, 2007

EXHIBIT F: Letter from David Long, Civil Engineer, and Ken Cooper, Home Designer, dated

February 16, 2008



## Sonoma County Board of Zoning Adjustments STAFF REPORT

Sonoma County Permit and Resource Management Department 2550 Ventura Avenue, Santa Rosa, CA 95403

(707) 565-1900 FAX (707) 565-1103

1-SON-07-052

FILE:

PLP06-0070

DATE:

December 13, 2007

TIME:

1:40 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:

Steven Star

Location:

221 Los Santos Drive, Bodega Bay, CA

APN 101-173-002

Supervisorial District No. 5

Subject:

Coastal Permit and Use Permit

PROPOSAL:

Request for a Coastal Permit to construct a 1,208 square foot single family

residence and a 400 square foot detached garage and a Use Permit to

reduce the riparian corridor setback from 100 feet to 50 feet.

Environmental

Determination:

Categorical Exemption 15303(a)

General Plan:

Rural Residential, 2 acre density

Specific/Area Plan:

Local Coastal Plan

Ord. Reference:

26C-91(a)

Zonina:

CC (Coastal Combining District), RR (Rural Residential), B7, G (Geologic

Hazard Combining District), and Z (Second Dwelling Unit Exclusion)

Project Complete

for Processing:

April 11, 2007

RECOMMENDATION:

Approve a modified Coastal Permit and Use Permit subject to the attached'

conditions in Exhibit A.

#### ANALYSIS

#### Background:

The existing parcel was created by Sereno Del Mar Subdivision Number 1, Tract Number 399, recorded January 22, 1970. There is no specific building envelope located on the project site, however, the subdivision map includes two building setback lines: a 50 foot setback to the westerly side property line and a 25 foot setback line to the front property line. There are no required setbacks from the waterway listed on the subdivision map. The current structural setbacks for the RR (Rural Residential) zoning district is: 30 feet for the front yard setback, 10 feet for the side yard setback, and 20 feet for the rear yard

> Exhibit No. 6 Appeal No. A-2-SON-08-010 (STEVEN STAR)

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setback.

On July 22, 2004, the Board of Zoning Adjustments (BZA) approved a Use Permit for a reduction in the riparian setback from 100 feet to 50 feet for the purposes of establishing a vesting certificate to vest the design and location of a future three bedroom septic system on the project site. On July 23, 2006, the Use Permit expired prior to commencing the use. On July 31, 2006, the applicant applied for a Coastal Permit to construct a single family residence and a new Use Permit application to reduce the riparian setback from 100 feet to 50 feet. The project was deemed complete on April 11, 2007. On August 16, 2007, the vesting certificate for the septic system expired and the system was redesigned for a smaller two bedroom system.

The parcel adjacent and to the east of the project site (225 Los Santos Drive/A.P.N. 101-173-003) submitted an application for a Coastal Permit and a Use Permit (PLP05-0082) to construct a 3,724 square foot single family dwelling and a 690 square foot detached garage and reduce the riparian corridor setback from 100 feet to 60 feet. On June 8, 2006, the BZA denied the request without prejudice for the following reasons:

- 1. The project is inconsistent with Local Coastal Plan policy Section III-12 (9) which prohibits construction of permanent structures within 100 feet from ripanan vegetation.
- 2. The applicant has not shown that adherence to the 100-foot riparian setback would result in a taking since the residence could be reduced in size and number of bedrooms could be reduced to minimize the area used by the septic system.

The property owner applied for a new Coastal Permit (CPN07-0014), reducing the size of the residence to two bedrooms and reducing the square footage to 3,164. Due to the reduction in size of the structures, the project was able to meet the 100-foot riparian corridor setback and the Coastal Permit was administratively approved on September 13, 2007. The adjacent parcel is 5,425 square feet larger than the project site, allowing more flexibility in the placement of a single family dwelling.

Since that time staff has determined that Attachment "M" in Local Coastal Plan (LCP) allows for a reduction in setbacks for environmentally sensitive habitat areas provided that specific findings are made.

#### Project Description:

The applicant proposes to locate a new 19 foot tall, 1,208 square foot single family dwelling with 137 square feet of covered porches and a 400 square foot detached garage on the project site. The residence is proposed to be sited approximately 50 feet from the edge of riparian vegetation located on the adjacent "Natural Drainage Easement" parcel to the north. The development includes appurtenant utility connections and development of a two bedroom septic system with a 100% expansion area. The proposed septic system would occupy a large portion of the front half project site leaving a very limited area to construct a residence given the required riparian, side yard and septic setback requirements. The proposed materials are horizontal hardie plank with a composition roof.

#### Site Characteristics:

The 26,825 square foot parcel is relatively flat and consists of fallow grassland. North of the project site is an existing off-site waterway with the riparian edge located approximately 15 feet from the rear parcel boundary line. Access to the site is located to the south on Los Santos Road. The site is currently vacant except for a 120 square foot shed and will be served by public water and a private septic system.

#### Surrounding Land Use and Zoning:

Parcels in the surrounding area are zoned CC (Coastal Combining District), RR (Rural Residential), B7, G (Geologic Hazard Combining District), and Z (Second Dwelling Unit Exclusion). Surrounding parcels are developed with single family dwellings, consistent with the Rural Residential General Plan land use designations.

#### **DISCUSSION OF ISSUES**

PRMD ADM FAX

Issue #1: Local Coastal Plan Consistency

Section III-12 of the Local Coastal Plan (LCP) prohibits construction of permanent structures within riparian areas as defined or requires a 100' setback from the lowest line of riparian vegetation, whichever is greater. However, Section III-12 of the Coastal Plan also states that development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of the riparian habitat. No riparian habitat will be impacted as a result of this project according to the biotic study discussed below. Therefore, the project can be found consistent with the LCP.

## Issue #2: Coastal Zoning Ordinance Consistency

The County setbacks for the RR (Rural Residential) zoning district in the Coastal Zone are: 30 feet for the front yard setback, 10 feet for the side yard setback, and 20 feet for the rear yard setback. Since the recorded Subdivision Map requires more restrictive building setbacks (specifically 50-foot side yard setback to the west property line) the project is consistent with setback standards for the RR (Rural Residential) zoning district. The Zoning Code building height limitation in the Sereno del Mar subdivision is 16 feet unless the Sereno Del Mar Architectural Control Committee approves a greater height (up to 24 feet). This project will still require review and approval by the Architectural Control Committee. The Architectural Control Committee has stated that they oppose the proposed 19 foot height and the reduction in the 100 foot riparian corridor setback.

The Sonoma County Coastal Zoning Code (Section 26C-91(a)) allows permitted uses of the Rural Residential District to be located within a sensitive area subject to approval of a Use Permit (see discussion in Issue # 3 below).

Issue #3: Riparian Corridor Setback Reduction/Biotic Resources

Section III-3 of the Local Coastal Plan defines riparian habitat as the following:

"Tree and shrub vegetation of freshwater courses. A line or belt of vegetation following the course of a river or stream on the immediate banks and appearing visually and structurally separate from the surrounding landscape. Boundaries are delineated by the outer edge of riparian vegetation. Riparian vegetation consists of that vegetation in or adjacent to permanent or intermittent freshwater streams and other freshwater bodies where at least 50 percent of the cover is made up of species such as alders, willows, cottonwoods, box elders, ferns, and blackberries."

The Local Coastal Plan (Environmental Resource Map Number 8) identifies environmental habitat, specific environmental resources, and riparian corridors as environmental habitats listed on this map. However, some riparian habitats are not listed on the Local Coastal Plan Environmental Resource Maps, including the riparian habitat located approximately 15 feet north of the subject residential lot. However, the waterway meets the definition of a riparian habitat, thus requiring a 100-foot development setback.

Attachment "M" located in the LCP Administrative Manual provides criteria for establishing buffer greas between development and environmentally sensitive habitat areas. Buffers are typically an unaltered open space between development and environmentally sensitive habitat areas that provide protection to the habitat from adverse impacts caused by the development. The width of a buffer area will vary depending on the characteristics of the affected habitat and proposed development, and each request must be evaluated on an individual basis.

Attachment "M" of the LCP Administrative Manual states:

"The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home or one commercial office building) unless that applicant can demonstrate that 100 feet is unnecessary to protect the resource of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a much wider buffer area should

be required. For this reason, the guideline does not recommend a uniform width. The appropriate width will vary with the analysis based upon the standards.

For a wetland, the buffer area should be measured from the landward edge of the wetland. For a stream or river, the buffer area should be measured landward from the landward edge of riparian vegetation or from the top edge of the bank. Maps and supplemental information may be required to determine these boundaries. Standards for determining the appropriate width of the buffer area as follows:

1. <u>Biological significance of adjacent lands.</u> Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. That is, functionally relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance would depend upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding or resting). This determination requires the expertise of an ecologist, wildlife biologist, omithologist, or a botanist who is familiar with the particular type of habitat involved. Where a significant functional relationship exists, the land supporting this relationship should also be considered to be part of the environmentally sensitive habitat area, and the buffer area should be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer should be extended from the edge of the wetland, stream or riparian habitat (for example) which is adjacent to the proposed development (as opposed to the adjacent area which is significantly related ecologically)."

A "Riparian Corridor Determination" study was prepared by Kjeldsen Biological Consulting. The study found that riparian vegetation was present along the banks of the stream and adjacent to the top of the bank is a dense thicket of Coyote brush. Coyote Brush is not considered to be a riparian plant. Coyote Brush extends from the top of the bank approximately 50 feet wide, creating a buffer between the proposed building site and the riparian habitat. The riparian vegetation is located approximately 50 feet from the proposed building site and 30 feet from the edge of the property line. The study concluded that due to the site conditions and habitat present, a 50 foot setback is justified and adequate to protect the riparian resources because the riparian vegetation is confined to the incised channel of the drainage. The study recommended that no Coyote Brush be removed as a part of site development to provide a buffer for the riparian area, and the riparian setback area shall remain in a natural and undisturbed state. Use of herbicide and pesticide will be prohibited within the buffer area. Staff received correspondence (dated July 12, 2004) from the California Department of Fish and Game (CDF) who agrees that the reduction in the setback from 100 feet to 50 feet is justified. CDF determined that this habitat is considered ephemeral in nature and supports no fish or other aquatic population.

The LCP Administrative Manual Attachment "M" also addresses sensitivity of plant and animal species to disturbance as follows:

- "2. <u>Sensitivity of species to disturbance.</u> The width of the buffer area should be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination should be based on the following:
  - a. Nesting, feeding, breeding, resting or other habitat requirements of both resident and migratory fish and wildlife species.
  - b. An assessment of the short-term and long-term adaptability of various species to human disturbance."

Based on the "Riparian Corridor Determination" prepared by Kjeldsen Biological Consulting, and correspondence received from CDF there are no sensitive species that will be disturbed as a result of the reduction in the setback from 100 feet to 50 feet.

The LCP Administrative Manual Attachment "M" also addresses the site's erosion susceptibility:

"3. Susceptibility of parcel to erosion. The width of the buffer area should be based, in part on an assessment of the slope, soils, impervious surface coverage runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided."

The project site is relatively flat with a gentle slope to the north west; the proposed project will not change the potential for erosion sedimentation to enter the riparian habitat. In addition, as part of the building permit process a grading permit will be required and the grading permit will include erosion control measures to be put in place during construction and after construction.

4. Use of natural topographic features to located development. Hills and bluffs adjacent to environmentally sensitive habitat areas should be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from environmentally sensitive habitat areas. Similarly, bluff faces should not be developed, but should be included in the buffer area.

Since the project site is relatively flat with gentle slopes, there are no bluffs or hills adjacent to the environmentally sensitive habitat that could be used as a buffer to the habitat. As previously stated, no Coyote Brush should be removed as a part of site development to provide a buffer for the riparian area.

5. <u>Use of existing cultural features to locate buffer zones.</u> Cultural features, (e.g., roads and dikes) should be used, where feasible, to buffer habitat areas. Where feasible, development should be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from environmentally sensitive habitat areas.

Access to the project site will be from an existing paved County road located approximately 200 feet south of the top of bank. Using this existing road will not disturb the riparian habitat. There are no other existing cultural features that could be used as a buffer to the riparian habitat.

6. Lot configuration and location of existing development. Where an existing subdivision or other development is largely built out and the buildings are a uniform distance from a habitat area, at least that same distance will be required as a buffer area for any new development permitted. However, if that distance is less than 100 feet, additional mitigation measures (e.g., planting of native vegetation which grows locally) should be provided to ensure additional protection. Where development is proposed in an area which is largely undeveloped, the widest and most protective buffer area feasible should be required.

The criteria for a riparian corridor is a minimum of a 100 foot setback to development unless there is a buffer area to provide protection to the riparian habitat (in this case, top of bank). The residence could be redesigned so that it would encroach 10 feet less into the 100 foot setback by relocating the master bath to the east side of the residence. Additionally, it appears that there is some flexibility in the front yard setback to also move the septic system approximately 15 feet to the south (towards Los Santos Drive), still consistent with required septic and zoning setback standards. This would allow the residence to be shifted an additional 15 feet from the top of bank to increase the setback to 75 feet from the top of bank. However, moving the septic system 15 feet to the south cannot be determined until a new design is submitted to the Well and Septic Division for review. The suggested re-design could provide a 75 foot setback further maximizing the buffer area and achieve greater consistency with the 100 foot setback criteria. If these design changes are infeasible, the setback should be a minimum of 50 feet. The property owner on the adjacent parcel was denied a reduction in the 100 foot setback and redesigned the project to meet the 100 foot setback.

7. Type and scale of development. The type and scale of the proposed development will, to a large degree, determine the size of the buffer area necessary to protect the environmentally sensitive habitat area. For example, due to domestic pets, human use and vandalism, residential developments may not be as compatible as light industrial development adjacent to wetlands, and may therefore require wider buffer areas. However such evaluations should be made on a case-by-case basis depending upon the resources involved, and the type and density of development

on adjacent lands.

A 50-75 foot setback to the top of bank is appropriate for this residential use because the riparian habitat will be protected by the Coyote Brush. As mentioned above, the buffer could potentially be further enhanced by an additional 25 feet by redesigning the master bath to provide 10 more feet of buffer and gaining potentially another 15 feet of buffer by adjusting the septic system towards Los Santos Drive.

Recommended Conditions of Approval require any future residence and associated outdoor decking, patio, trails, and landscaping areas to be subject to a 75 foot setback (if determined possible) but no less than 50 feet from of bank. It is recommended that no Coyote Brush be removed as a part of site development to provide a buffer for the riparian area. Use of herbicide and pesticide will be prohibited within the buffer area. The riparian setback area shall remain in a natural and undisturbed state.

#### Issue #4: Architecture Design Guidelines

The Sereno Del Mar subdivision is highly visible from Highway 1 and section VII-47 of the Local Coastal Plan requires that the design guidelines in section VII-54 be followed which includes: using natural materials and earth colors which blend with the vegetive cover of the site, the use of non-reflective exterior surfaces, and composition shingle roofs. In addition, the Administrative Manual of the LCP requires that the Sereno Del Mar Architectural Control Committee review and approve the proposed project for consistency with the LCP design guidelines. As a condition of approval the applicant will be required to submit a letter of approval from the Sereno Del Mar Architectural Control Committee to the project Planner prior to submittal of a building permit. The proposed project is in conformance with the LCP design guidelines.

#### Issue #5: CEQA Compliance

The biological survey found that the project as conditioned herein would not adversely impact biological resources. Section 15303 of the CEQA Guidelines provides for Class 3 Categorical Exemptions from CEQA for new construction and conversion of small structures. Section 15203 (a) exempts one single-family residence.

#### Issue #6: Code Enforcement

On October 11, 2007, a complaint was filed with the Code Enforcement Division that a shed had been constructed within the Coyote Brush adjacent to the riparian habitat. The property owner is in the process of relocating the shed outside of the Coyote Brush. The project shall be conditioned to resolve all violations prior to issuance of any grading/building permits.

#### STAFF RECOMMENDATION

Approve the Coastal Permit to construct a 1,208 square foot single family residence with a 400 square foot detached garage, and a Use Permit to reduce the riparian corridor setback from 100 feet to a 50 to 75 foot setback subject to Conditions of Approval in Exhibit A.

#### FINDINGS FOR RECOMMENDED ACTION

- 1. The project is consistent with the Local Coastal Plan in that Section III-12 of the plan states that development shall be allowed only if it can be sited and designed to prevent impacts which would significantly degrade riparian areas, and shall be compatible with the continuance of the riparian habitat. Based on the biotic study prepared for this project, no riparian habitat will be impacted as a result of the setback reduction from 100 feet to 50 feet as measured from top of bank. Therefore, the project can be found consistent with the Local Coastal Plan.
- 2. The project is consistent with the Sonoma County Coastal Zoning Code (Section 26C-91(a)) which allows permitted uses of the Rural Residential District to be located within a sensitive area subject to approval of a Use Permit, provided that the project can be found consistent with the Local Coastal Plan. As stated in the aforementioned finding, the project is consistent with the

Local Coastal Plan.

707-565-1103

- 3. The proposed project meets all of the required standards contained within Attachment "M" of the Local Coastal Plan Administrative Manual which allows a reduction in the setback from 100 feet to 50 feet for the following reasons: a protective buffer will be located between the proposed project and the riparian habitat; the buffer will consist of an existing cover of Coyote Brush which is not considered riparian vegetation; and the buffer provides protection to the habitat from adverse impacts caused by the development.
  - 4. A "Riparian Corridor Determination" study was prepared by Kjeldsen Biological Consulting (dated December 4, 2003). The study concludes that due to the site conditions and habitat present, a 50 foot setback is justified and adequate to protect the riparian resources, and will not significantly degrade the riparian habitat for the following reasons:
    - a) The riparian corridor and riparian vegetation is confined to the incised channel of the drainage.
    - b) The presence of a Coyote Brush cover on the upland bank between the riparian corridor and riparian vegetation will provide a buffer. This upland shrub vegetation will provide a continuous buffer along the northern property line.
- 5. The proposed septic system must be located at least 100 feet from riparian vegetation and the only suitable location for the septic system is on the front portion of the parcel, thus dictating the placement of the single family dwelling. Given the significant development constraints imposed on the subject site due to required riparian, side yard and septic setback requirements, strict compliance of a reduction in the 100-foot riparian setback would result in an almost unbuildable
- 6. This project is categorically exempt from CEQA under section 15303(a) as it will not have a significant effect on the environment because the proposed site improvement is a single family dwelling and the biological survey determined that the proposal would not affect sensitive biological resources.

#### LIST OF ATTACHMENTS

**EXHIBIT A:** Conditions of Approval EXHIBIT B: Proposal Statement

EXHIBIT C: Riparian Corridor Determination

EXHIBIT D: Vicinity Map EXHIBIT E: Zoning Map EXHIBIT F: Aerial Photo EXHIBIT G: Site Map

EXHIBIT H: Subdivision Map

EXHIBIT I: Floor Plan & Elevation Plan

EXHIBIT J: Site Photo

EXHIBIT K: Correspondence from Fish and Game

EXHIBIT L: Correspondence from the Applicant's Attorney

EXHIBIT M: Opposition Correspondence from Sereno Del Mar Architectural Control Committee

EXHIBIT N: **Draft Resolution** 

## KJELDSEN BIOLOGICAL CONSULTING

## Chris K. Kjeldsen Ph.D., Botany

# Daniel T. Kjeldsen B.S., Natural Resource Management CONSULTING BIOLOGISTS

923 St. Helena Ave. Santa Rosa, CA. 95404

December 4, 2003

T0:

Michael B. Morrison Planning Consultant Common Ground 411 Russell Avenue

Santa Rosa, California 95403

Re:

Riparian Corridor Determination

Catherine Carlson Property

Los Santos Drive

Sereno Del Mar Subdivision No. 1

Sonoma County

#### Introduction

As requested by Mr. Michael B. Morrison, Planning Consultant, Common Ground Land Planning Services, we review the above referenced property to determine if a riparian corridor exists on the adjoining parcel. We were provided with a site plan and aerial photograph. Plate I provides a location map and Plate II illustrates the site location. An aerial photograph of the property is shown in Plate III.

Background

The Local Coastal Plan Defines a Riparian Corridor as "Tree and shrub vegetation of freshwater courses. A line or belt of vegetation following the course of a river or stream on the immediate banks and appearing visually and structurally separate form the surrounding landscape. Boundaries are delineated by the outer edge of riparian vegetation. Riparian vegetation consists of that vegetation in or adjacent to permanent or intermittent freshwater streams and other freshwater bodies where at least 50 percent of the cover is made up of species such as alders, willows, cottonwoods, box elders, ferns and blackberries."

#### Site Review

Our field reconnaissance was conduced on December 2, 2003 between the hours of 09:00 to 10:00 on a clear day with no wind and mild temperatures. The site was reviewed by walking the property and adjoining area. Photographs below were taken on December 2003 using a Sony Digital camera.

Exhibit No. 7
Appeal No. A-2-SON-08-010
(STEVEN STAR)
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Figure 3. View of the north side of the property where vegetation begins.

#### Findings

- The parcel consists of fallow grassland that has been routinely mowed. The dominant species are velvet grass, rye grass, yarrow, rumex and iris. A complete species list of plants observed is attached;
- There is a "blue line" stream on the adjoining parcel that is in a gully cut in the surrounding topography;
- Riparian vegetation is present along the banks of this stream. The riparian vegetation consists of willows, cow parsnip, sword fern, salmon berry, and native blackberries. The riparian vegetation is discontinuous and lacks an overhead canopy;
- The upland grassland prairie above the bank of the stream consists of a dense thick shrub cover of *Baccharis pilularis* (Coyote Brush). *Baccharis* is not considered to be a riparian plant;
- The centerline of the drainage is 50 feet or more from the edge of the property line;
- The edge of the riparian vegetation is 30 feet from the property line;
- The proposed building envelope is 50 feet from the edge of the riparian vegetation; and
- There is a band of upland vegetation dominated by *Baccharis* between the edge of the riparian vegetation and the proposed building site. Exhibit No. 7

Appeal No. A-2-SON-08-010
(STEVEN STAR)
Findings Riparian Corridor Determination
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#### Cathle'en Jones

भा:

Bill Cox [bcox@dfg.ca.gov]

nt: ∠u: Monday, July 12, 2004 10:44 AM

Cathleen Jones

Subject:

Re: Carlson project; M Morrison's email

#### Cathleen;

I have tried several times to e-mail Mike, but it always comes back rejected. This is the message for Mike if you can pass it on to him.

#### Mike

As we discussed before, I have no objection to reducing the creek setback on the Carlson property at 221 Los Santos Drive at Serena Del Mar from 100 feet to 50 feet. From the Kjeldsen report it is clear that all stream and riparian resources would be preserved with a 50 foot setback. The only loss of habitat would coyote brush and would not be significant. This stream is ephemeral in nature and supports no fish or other aquatic population.

Bill Cox District Fishery Biologist Sonoma / Marin California Department of Fish and Game

> Exhibit No. 8 Appeal No. A-2-SON-08-010 (STEVEN STAR) Correspondence from CDFG

