

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: October 16, 2014

TO: Zoning Hearing Officer

FROM: Planning Staff

SUBJECT: Consideration of a Coastal Development Permit, pursuant to Section 6328.4 of the County Zoning Regulations, and a Certificate of Compliance (Type B) to confirm the legality of an unimproved 5,000 sq. ft. parcel, pursuant to Section 7134.2 of the County Subdivision Regulations, located at the corner of Del Mar Avenue and Madrone Avenue in the unincorporated Moss Beach area of San Mateo County. This project is appealable to the California Coastal Commission.

County File Number: PLN 2014-00067 (Sattelmayer)

PROPOSAL

The applicant has applied for a Certificate of Compliance (Type B) to confirm legality of the parcel. The Type B is required because the subject parcel (Lots 15 and 16, Block 18, "Riviera Ocean Villa Tract," RSM Volume 6, page 20, recorded in 1908) was not conveyed separately from the surrounding adjacent lots until 2004, which was after July 1945, the effective date of the County's first subdivision ordinance. The Certificate of Compliance (CoC) ensures compliance with the County Subdivision Regulations, which trigger the accompanying Coastal Development Permit (CDP) as required by the County's Local Coastal Program (LCP).

RECOMMENDATION

That the Zoning Hearing Officer approve the Coastal Development Permit, and the Certificate of Compliance (County File Number PLN 2014-00067), by making the required findings and adopting the conditions of approval identified in Attachment A.

BACKGROUND

Report Prepared By: Pete Bentley, Project Planner, Telephone 650/363-1821

Applicant: Luis Barbosa

Owner: Helen Sattelmayer

Location: At the southwesterly corner of Del Mar Avenue and Madrone Avenue, Moss Beach

APN: 037-277-160

Size: 5,000 sq. ft.

Existing Zoning: R-1/S-105/GH/DR (Single-Family Residential/20,000 sq. ft. Minimum Parcel Size/Geologic Hazard/Design Review)

General Plan Designation: Medium-Low Density Residential (2.4 – 6.0 dwelling units per net acre)

Parcel Legality: Lots 15 and 16, Block 18, "Map of Riviera Ocean Villa Tract," recorded in San Mateo County Records on June 15, 1908, into Book 6 at page 20. Confirmation of the legality of this parcel is the purpose of this application and discussed in Section A.3 of this report.

Existing Land Use: Vacant

Water Supply and Sewage Disposal: Montara Water and Sanitary District (MWSD)

Flood Zone: FEMA Flood Insurance Rate Map designation indicates parcel as Zone V (Coastal Flood Zone with velocity hazard), Map No. 06081C0119E, effective date October 16, 2012.

Environmental Evaluation: Categorically exempt under provisions of Class 5, Section 15305 of the California Environmental Quality Act Guidelines.

Setting: The subject vacant parcel is located at the southwesterly corner of Del Mar Avenue and Madrone Avenue, approximately 600 feet east of the coastal bluff. Del Mar Avenue (in this area) is an improved, County non-maintained roadway. Madrone Avenue is also an unimproved non-maintained roadway. The subject parcel is adjacent to developed parcels in all directions. Residences were legally built on the adjacent parcel, 86 Madrone Avenue, in 1985, and at 74 Madrone Avenue. To the rear of the subject parcel, a residence was legally built in 1987. Sanitary sewer lines are located within the road right-of-way, and fire hydrants are also located nearby. Approval of the Certificate of Compliance would allow development at a later date, at which point a sanitary sewer connection would be obtained, as well as a domestic water connection from Montara Water and Sanitary District (see Attachment E).

DISCUSSION

A. KEY ISSUES

1. Conformance with Zoning Regulations

The subject 5,000 sq. ft. parcel is zoned R-1/105/GH/DR, where the minimum parcel size is 20,000 sq. ft. As such, it is understood that the parcel is legal (pursuant to its initial creation and the subject of this application), non-conforming. Future development will require a new

Coastal Development Permit (CDP and all applicable LCP Policies), the R-1/105 Zoning Regulations and both the Coastside Design Review (DR) application process and standards. Future development would also be subject to the Geologic Hazard (GH) requirements. The parcel is located in Zone 3 of the GH Overlay District, which the GH regulations consider the most stable part of the Seal Cove area. Pursuant to Section 6296.3, Table 1 stipulates the requirements for geotechnical investigation, such that prior to any development, there shall be an engineering investigation by a certified engineering geologist and a soil and foundation investigation by a registered civil engineer. See Section A.4. of this report for discussion on the Community Development Director's discretion on requiring compliance with all of these zoning requirements at the time that a proposal for residential development is submitted.

2. Conformance with the General Plan

The proposal complies with General Plan (GP) Policy 8.13 (*Appropriate Land Use Designations and Locational Criteria for Urban Unincorporated Areas*) in that this portion of unincorporated Moss Beach has a GP Land Use Designation of Medium-Low Density Residential (2.4 – 6.0 dwelling units/net acre). The Certificate of Compliance, upon recordation, will legalize Lots 15 and 16 as one 5,000 sq. ft., developable parcel. The proposal does not exceed this density. This area is correspondingly zoned R-1/S-105, with which the proposed project is not in compliance relative to the proposed lot size (the subject lot is less than 20,000 sq. ft.). However, the project does comply with Policy 8.14 (*Land Use Compatibility*), in that upon resolution of the parcel's legality, the property's future development with a single-family residence – in compliance with use permit conditions for a non-conforming parcel and Design Review development regulations and standards – would “protect and enhance the character of existing single-family areas.”

3. Conformance with the Local Coastal Program (LCP)

The subject CoC (Type B) requires a Coastal Development Permit. As such, under the LCP's “Locating and Planning New Development Component,” Policy 1.8 (*Location of New Development*) seeks to “concentrate new development in urban areas ...by requiring the “infilling” of existing residential subdivisions [of which the “Riviera Ocean Villa Tract” represents in this urban area of Moss Beach] ...” Should this application be approved, it would allow the potential development (pursuant to other constraints as previously discussed in Section A.1 of this report) of this parcel, in concert with this policy. Policy 1.20 (*Lot Consolidation*) speaks to the consolidation (e.g., merger) of contiguous lots, held in the same ownership in residential subdivisions in the Seal Cove area. While many such LCP-triggered mergers occurred in this area in June 1983, the subject parcel was not merged with any others and is currently separately owned from any contiguous lots. In the LCP's Public Works Component,

Policy 2.19 (*Sewer Phase 1 Capacity Allocations*) seeks to ensure that the parcel's future sewer connection does not exceed the Phase 1 capacity limitations discussed in the "Sewers" section of this Component. This parcel, while substandard in size, was considered as a qualified parcel within the Phase 1 capacity limits.

LCP Policy 1.28 (*Coastal Permit Standards for Legalizing Parcels*) requires a CDP when issuing a CoC (Type B) to legalize parcels. The CDP is included as an element of this application. Policy 1.29 provides standards for review when legalizing parcels. Subsections (a) through (e) all require a CDP and that the project shall comply with any applicable LCP resource protection policies, depending on whether or not the "parcel" is developed, and/or whether the parcel was created before Proposition 20 (effective date January 1, 1973). Permits to legalize this parcel shall be, where applicable, conditioned to maximize consistency with LCP resource protection policies. Other than the subject application to confirm the legality of the parcel, no other development is proposed at this time.

Relative to applicable LCP policies, there are no sensitive habitats near the subject parcel. However, given the parcel's location in Zone 3 of the GH Overlay District, LCP (Hazards Component) Policy 9.3 (*Regulation of Geologic Hazard Areas*), which applies the Resource Management (RM) Zoning Ordinance to such areas, specifically Section 6323.3 (Seismic Fault/Fracture Area Criteria), requiring "geologic reports prepared by a certified engineering geologist...for all proposed development". Tandem with this is Policy 9.10 (*Geotechnical Investigation of Building Sites*), which requires a the "County Geologist...to review all building and grading permits in designated hazardous areas for evaluation of potential geotechnical problems and to review and approve all required investigations for adequacy." The impacts relative to hazards (e.g., being located within the GH zone) will trigger the requirement of the geologic and soils reports as cited here and in Section A.1 of this report at the time of a future development proposal for a residence. The Community Development Director's discretion – with a CoC (Type B) – to delay that requirement until such time as the CDP is considered and, again, when a building permit is submitted for development of the parcel is discussed in Section A.4 of this report.

Future development of a new residence on the legalized parcel will require Design Review and Coastal Development Permit approvals. Pursuant to the Zoning Nonconformities Chapter, Section 6133.3 (*Development of Non-Conforming Parcels*), Subsection (a)(1) states that a Use Permit would not be required to develop the parcel since the parcel size is 5,000 sq. ft.; only parcels less than that where the minimum parcel size is 20,000 sq. ft. would. Pursuant to Subsection (b)(1)(a), only if the parcel was less than 5,000 sq. ft. would a Use Permit be required. However, this section also prohibits any permit exception to be granted to exceed maximum floor area, height and lot coverage for parcels in the Midcoast area.

4. Conformance with Subdivision Regulations

A Conditional CoC (Type B) is required to legalize parcels in compliance with provisions of the County and State subdivision laws in effect at the time of creation. This process is required before any new development can be approved or proceed.

As a result of County Counsel's opinion in response to court case decisions occurring in 2008 and 2009, the subject parcel boundary's legal status (relative to its separate conveyance from any lots adjacent and around it) must be confirmed because it is an undeveloped parcel of an antiquated subdivision, in this case, Lots 15 and 16, Block 18 of the "Map of Riviera Ocean Villa Tract" recorded in 1908. The County Subdivision Regulations, Section 7134, allow for either a CoC (Type A) or CoC (Type B) to resolve and confirm a parcel's legality. As such, to qualify for a CoC (Type A) (pursuant to Section 7134.1), relative to the tenants of the cited court cases, it must be confirmed that the lot or lots comprising the subject project parcel were conveyed separately from any surrounding lots (beyond the subject property whose legality is to be confirmed) prior to the County's adoption of its first Subdivision Ordinance in July 1945. If such conveyance is confirmed to have occurred after that date, a CoC (Type B) (pursuant to Section 7134.2) shall be required, as is the case with this application.

Relative to Counsel's direction for establishing criteria to confirm the legal conveyance of the lots comprising the subject parcel, staff has reviewed both recorded deed conveyance history of the adjacent parcels (86 Madrone Avenue to the south and 75 Precita Avenue to east), as well as the submitted Chain of Title and Grant Deed data of the subject parcel. While the latter grant deed data confirm that the first deed conveying both Lots 15 and 16 together (and separate from any other adjacent lots) was recorded on August 25, 1986, a deed for 86 Madrone Avenue recorded in 1979 confirmed the legal status of the subject parcel's 100-foot long side (southerly) boundary. Similarly, a deed for 75 Precita Avenue recorded in November 1983 confirmed the legal status of the subject parcel's 50-foot long rear (easterly) boundary. Thus, the boundaries of subject parcel (both Lots 15 and 16) were deemed to have come into their separate conveyance by 1983 (see Attachment D). Since this is after July 1945, a CoC (Type B) is required to confirm the land division's legality. Section 7134.2.c allows for the approval and recordation of a CoC subject to a public hearing and the imposition of conditions of approval to ensure that eventual development on the lot (as a single parcel) complies with public health and safety standards.

Regarding conditions of approval, Section 7134.2.c(a) of the County Subdivision Regulations states that the Community Development Director may impose "any conditions which would have been applicable [to the division] at the time the applicant acquired his or her interest in the property, and which had been established at the time of the Map Act or the County Subdivision Regulations." The zoning of this parcel and surrounding area

was R-1 in 1946 (having first been zoned in 1941), with a minimum parcel size of 5,000 square feet. From that time, up until the cited court decisions, parcels of a lesser size were acceptable if they were “shown as lots on any subdivision map which was recorded in the Office of the County Recorder”...of San Mateo County. Aside from the need to confirm the subject parcel’s legality pursuant to the previously cited court cases, these lots were shown as part of the cited subdivision recorded in 1908. Finally, when the critical deed for conforming the final side of the subject parcel’s boundaries was recorded in November 1983, the R-1/S-10 regulations (20,000 minimum parcel size) were in place and the June 1983 mergers had already occurred (although not affecting this parcel) (see Attachment E). However, that history does not impede the approval and recording of the CoC (Type B) for legalization purposes. The Community Development Director is proposing conditions which are cited in Attachment A of this report, relative to all future development and the requirement of a CDP, DR and regulatory compliance with all applicable County Departments, including the Coastside Fire Protection District.

Additionally, roadway, sanitary and energy infrastructures exist within this predominantly developed and improved subdivision in Moss Beach. Given these facts, along with the nature and intent of the previously cited court cases mandating that these lots legality be confirmed, there are no additional improvements (typical of an urban subdivision) that must be required via conditions. The only additional and applicable improvements (i.e., house planning and building permits, sewer, water and energy line laterals from the street to a future house) will be triggered and required at the time of the submittal and issuance of those respective permits. Thus, the Community Development Director, pursuant to Subsection (c) of the above-cited section, stipulates that “compliance with the conditions of the Conditional Certificate of Compliance is not required until the time which a permit or other grant of approval for development of the property is issued by the County.”

B. ENVIRONMENTAL REVIEW

The proposed parcel legalization is categorically exempt from the California Environmental Quality Act (CEQA) under Section 15305, Class 5: minor alterations in land uses that do not result in any change in land use or density. The process and documentation to legalize the subject lot represents a minor alteration in land use.

D. REVIEWING AGENCIES

San Mateo County Planning Department
County Counsel

ATTACHMENTS

- A. Recommend Findings and Conditions of Approval
- B. Location Map and Vicinity Map
- C. Original "Riviera Ocean Villa Tract Map"
- D. Conveyance History of APN 037-277-160 (Lots 15 and 16)
- E. Chronology of Zoning and Recorded Deed Events Affecting Parcel

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County of San Mateo
Planning and Building Department

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2014-00067 Hearing Date: October 16, 2014

Prepared By: Pete Bentley
Project Planner

For Adoption By: Zoning Hearing Officer

RECOMMENDED FINDINGS

For the Environmental Review, Find:

1. That the project is categorically exempt under provisions of Class 5, Section 15305 of the California Environmental Quality Act Guidelines which exempts minor alterations in land use that do not result in any change in land use or density, whereby the process and documentation to legalize the subject lots represents such a minor alteration in land use.

For the Conditional Certificate of Compliance (Type B), Find:

2. That the processing of the Certificate of Compliance (CoC) (Type B) is in conformance with the County Subdivision Regulations Section 7134 (Legalization of Parcels; Certificate of Compliance) particularly Section 7134.2(a), (b), and (c).
3. That the processing of the Conditional CoC (Type B) is in full conformance with Government Code Section 66499 et. seq.

For the Coastal Development Permit, Find:

4. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms to the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
5. That the project conforms to the specific findings required by policies of the San Mateo County Local Coastal Program. Future development of this property represents infill within an otherwise predominantly developed residential area, where a sanitary sewer connection would be available, as would a domestic water service connection. The process of confirming the parcel's legality does not affect any known resources stipulated in the Local Coastal Program, save for the geologic hazard policies, which will be reviewed upon submittal of any future application for residential development on the parcel.

RECOMMENDED CONDITIONS OF APPROVAL

Current Planning Section

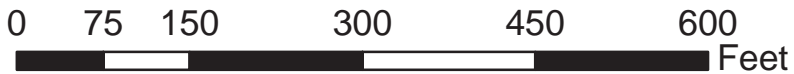
1. This approval applies only to the proposal as described in those plans, supporting materials and reports submitted on February 25, 2014 and September 15, 2014, and as approved by the Zoning Hearing Officer. Minor revisions or modifications to the project may be made subject to the review and approval of the Community Development Director if they are consistent with the intent of and in substantial conformance with this approval.
2. The subject Certificate of Compliance (Type B), which shall represent Lots 15 and 16 as one single, legal developable parcel, shall be recorded prior to the issuance of any other permits related to any development on this property.
3. The applicant is hereby informed that any future development on this parcel would be subject to compliance with the zoning regulations in place at that time, as well as with any applicable policies of the County Local Coastal Program. All such future development shall require a Coastal Development Permit (CDP) and Design Review (DR) Permit. This approval does not authorize the removal of any trees or other disturbance to the site. Any such tree removal or grading shall be submitted as part of a future CDP/DR application. No such site disturbance may occur until a building permit for the parcel's primary development of a single-family residence is submitted and issued.
4. At the time of submittal of a CDP for future development of the subject parcel, the applicant shall submit the required geologic and soils report prepared by a certified engineering geologist. The County Geologist shall dictate the scope and detail of the report relative to the proposed development for evaluation of potential geotechnical problems and review and approve all required investigations for adequacy, prior to the CDP being approved. A more detailed geotechnical report and the County Geologist's review will be required at the time of a building permit submittal for the subject development.
5. The applicant is advised that, prior to recordation of the Certificate of Compliance description, the owner/applicant shall provide the Project Planner with a check to cover the fee now charged by the Recorder's Office. The fee is estimated to be \$34.00, if a "conformed" copy is requested by the owner, and \$24.00 without a conformed copy. The Project Planner will confirm the amount prior to recordation.

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VIO2002-00517

 Project Parcels



Vicinity Map

San Mateo County Zoning Hearing Officer Meeting

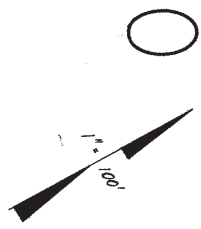
Owner/Applicant: _____

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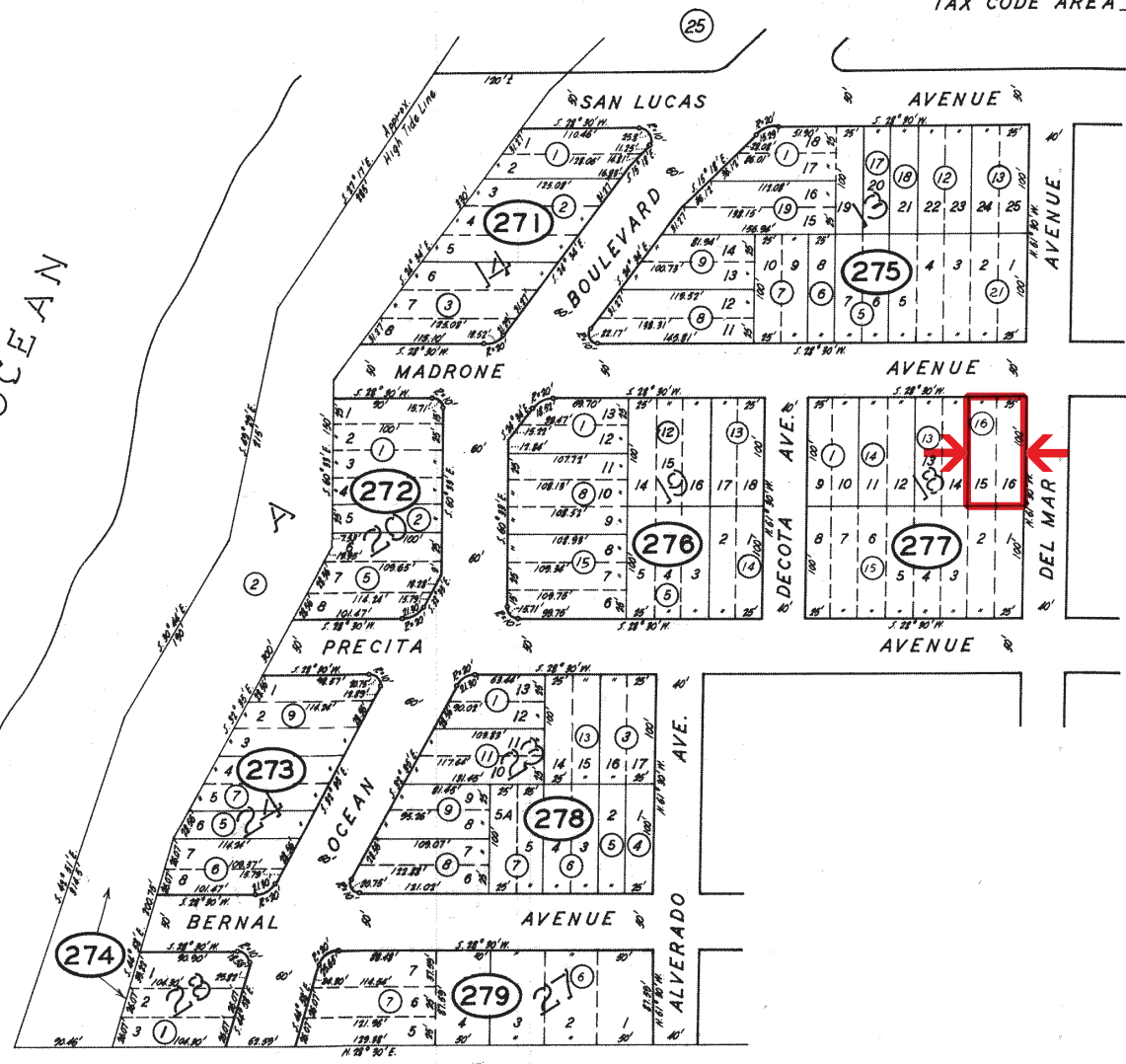
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TAX CODE AREA _____

37-27



PACIFIC OCEAN



28

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RIVIERA OCEAN VILLA TRACT RSM 6/20

ASSESSOR'S MAP COUNTY OF SAN MATEO, CALIF.

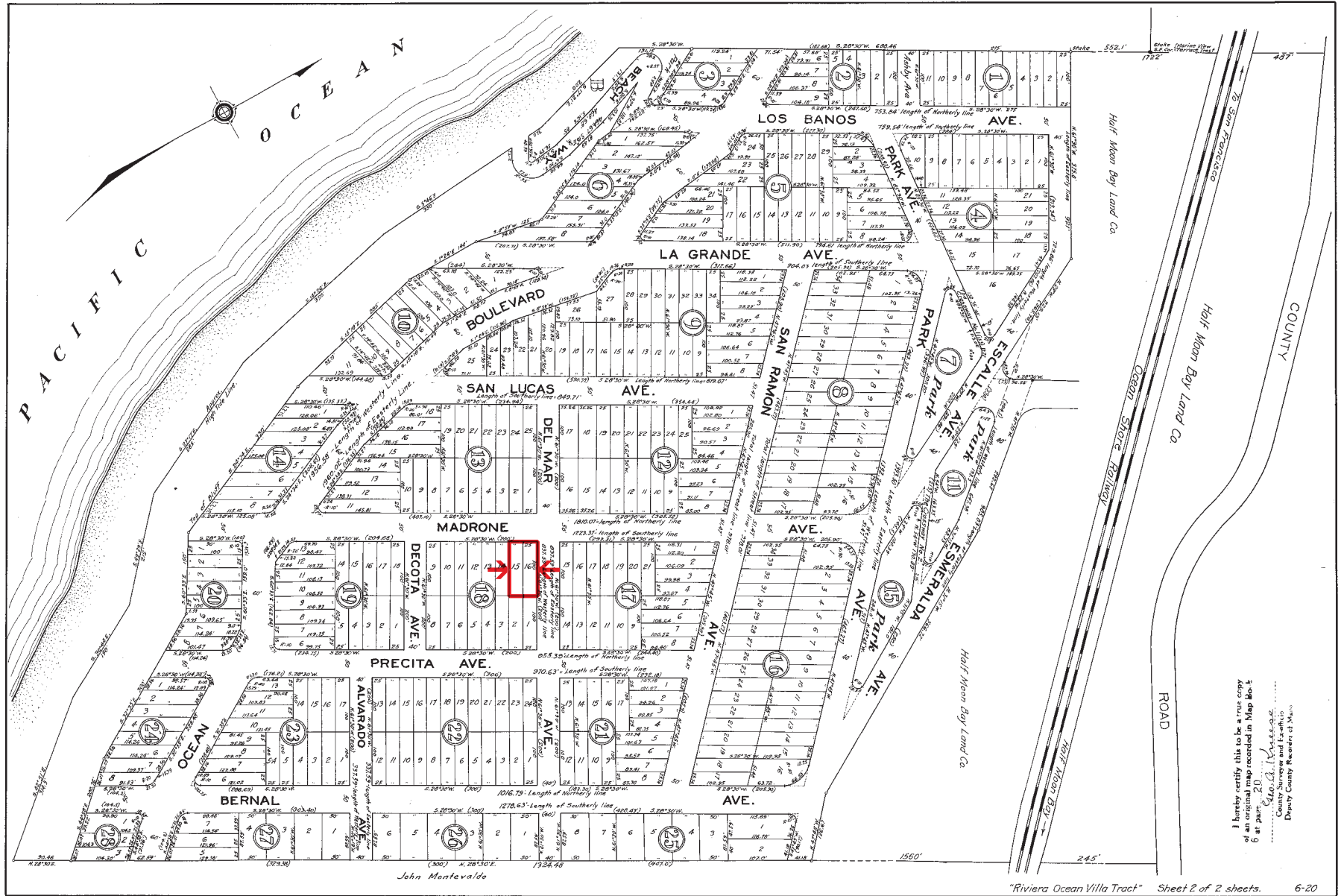
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San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant: _____

Attachment: _____

File Numbers: _____



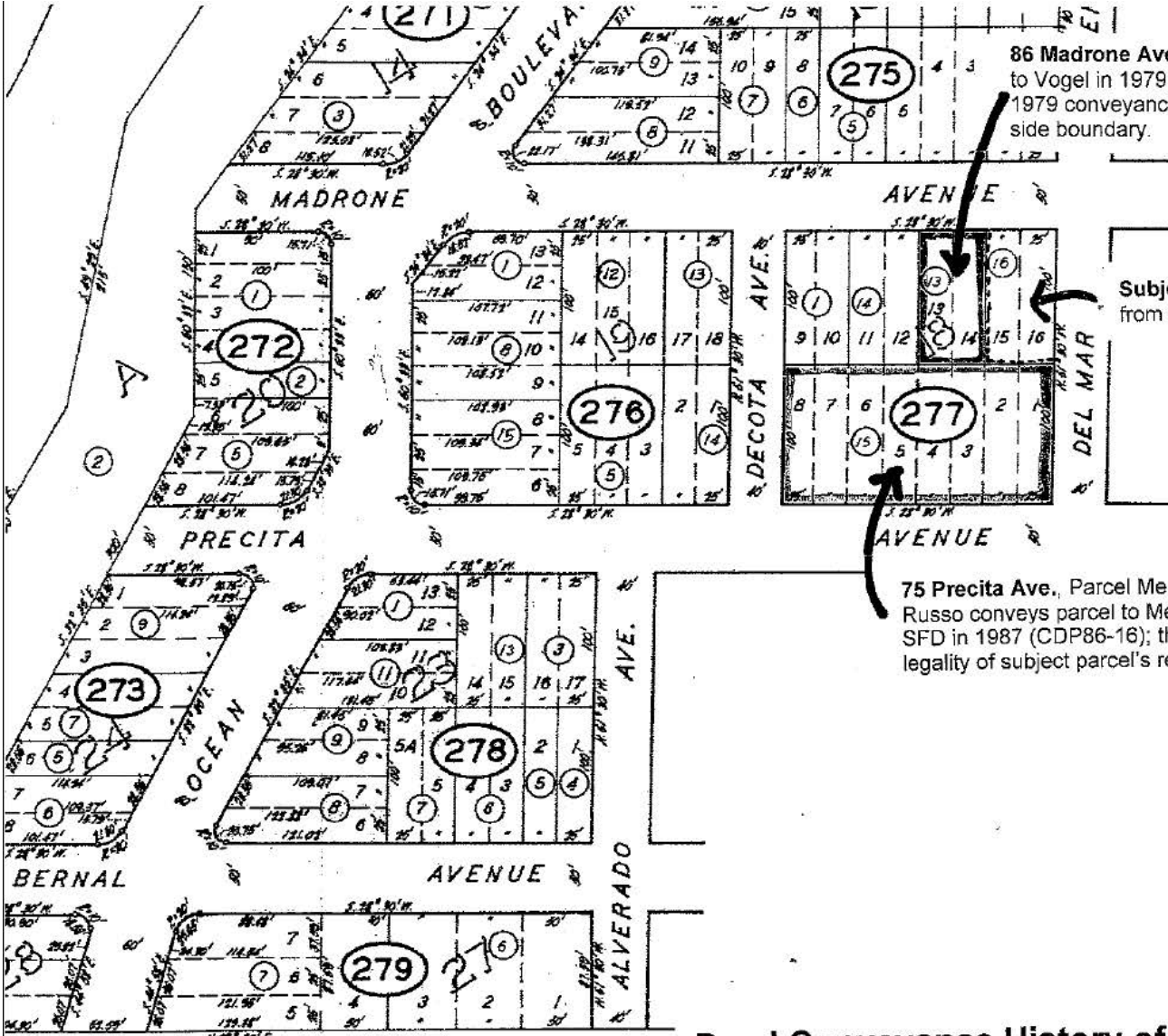
I hereby certify this to be a true copy of an original map recorded in Map Book 6 at page 20
 G. C. Walker
 County Surveyor and Ex-officio Deputy County Recorder of Placer

San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant:

Attachment:

File Numbers:



86 Madrone Ave., Parcel conveyed from HMB Properties to Vogel in 1979, who builds SFD in 1982 (CDP82-74); the 1979 conveyance confirms legality of subject parcel's 100' side boundary.

Subject Parcel; initially conveyed on its own (separate from adjoining parcels) on 8/14/86

75 Precita Ave., Parcel Merged 6/30/83 (Owner: Russo) Russo conveys parcel to Menzel on 11/25/83, who builds SFD in 1987 (CDP86-16); the 1983 conveyance confirms legality of subject parcel's rear 50' boundary.

Deed Conveyance History of: 037-277-160 (Lots 15 & 16)

RIVIERA OCEAN VILLA TRACT RSM 6/20

ASSESSOR'S MAP COUNTY OF SAN MATEO, CALIF.

San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant: _____

Attachment: _____

File Numbers: _____

County of San Mateo
Planning and Building Department

CHRONOLOGY OF EVENTS AFFECTING SUBJECT PARCEL

<u>Date</u>	<u>Action</u>
June 15, 1908	- "Map of Riviera Ocean Villa Tract" recorded with San Mateo County Records, creating subject Lots 15 and 16 (subject APN 037-277-160).
1941	- Seal Cove area's first zoning is R-1 (5,000 sq. ft. minimum parcel size).
1962	- Zoning Ordinance Section 6303 (<i>Exceptions to Minimum Lot Sizes</i>) added (although since repealed), stating: <i>When any subdivision lot of record [which the subject two lots are considered] fails to meet the minimum lot size for the zoning district...because of any amendment by which the minimum lot size...is increased [which occurred around 1980] said lot shall continue to be a legal building site: 1) if the lot has a minimum of 5,000 s/f, 2) any development maintains the required front, side and rear setbacks specified in the zoning district, and 3) no adjacent vacant lot of a similar size was under the same ownership at the date of the adoption of the amended zoning districts regulations that increased minimum parcel size.</i>
1977	- Zoning maps show Seal Cove area (including subject parcel) to be zoned R-1/S-7 (5,000 sq. ft. minimum parcel size); actual date of this zoning adoption unknown.
1980	- Zoning maps show Seal Cove area to be zoned R-1/S-10 (20,000 sq. ft. minimum parcel size); actual date of this zoning adoption unknown. Pursuant to Section 6303 (<i>Exceptions to Minimum Lot Sizes</i>) as cited above, the parcel adjacent to the subject parcel (APN 037-277-130) was vacant at this time and of identical size.
June 1983	- Seal Cove and Miramar Area lot mergers. Triggered by and cited in Local Coastal Program (Policy 1.20; <i>Lot Consolidation</i>) : "according to the densities in the Land Use Plan Maps [which in the case of Seal Cove had , consolidate contiguous lots, held in the same ownership, in residential

subdivisions in Seal Cove to minimize risks to life and property [due to the Geologic Hazard Overlay Zone]...”
The lot mergers did not merge contiguously owned lots to necessarily comply with the new 20,000 sq. ft. minimum; any number of qualifying lots were merged, even if their consolidated total size was less than 20,000 square feet. However, there is no evidence (e.g., no recorded document) that the subject parcel (Lots 15 and 16) was merged at that time.

- 1985
- Residence built on adjacent APN 037-277-130 (86 Madrone Avenue). Owner at time of application (CDP 82-74) is Mary Vogel, whose deed showed that she owned only the subject parcel (comprised of Lots 13 and 14), and had purchased the parcel on September 17, 1979, from Half Moon Bay Properties, Inc. It was this 1979 deed that confirmed the legality of the subject parcel's 100-foot long adjacent and side (southerly) boundary.
- 1987
- Residence built on adjacent APN 037-277-150 (75 Precita Avenue). This parcel (comprised of Lots 1 through 8) had been merged on June 30, 1983, under the owner Jack Russo. On November 25, 1983, Jack Russo conveyed the merged parcel to Rudolf Menzel, who owned the property when he built his residence in 1987 (CDP 86-16). It was this 1983 deed that confirmed the legality of the subject parcel's 50-foot long adjacent and rear (easterly) boundary.
- August 8, 2000
- Present R-1/S-105 Zoning District regulations adopted for Seal Cove area, including subject parcel. Minimum lot size unchanged.
- 2001
- Zoning Nonconformities Ordinance adopted. Subject parcel would be deemed a legal, non-conforming parcel based on its substandard size (5,000 sq. ft. where 20,000 sq. ft. is required) and its width (50 feet where 75 feet is required). Pursuant to Section 6133.3 of that ordinance (*Development of Non-Conforming Parcels; Development Not Requiring a Use Permit*), future development of this parcel would not require a Use Permit if such development otherwise conforms to all R-1/S-105 zoning regulations. This is because the threshold for requiring a Use Permit applies only if the parcel were less than 5,000 sq. ft. in size and less than 50 feet in width.

- February 27, 2004 - Submitted Chain of Title confirms that subject parcel (Lots 15 and 16) is conveyed separately for the first time; recorded on this date (purchased by present owner, Sattelmayer) from any adjacent parcels, necessitating a Certificate of Compliance (Type B) to confirm the parcel's legality.
- 2010 - Witt/Abernathy Policy (pursuant to County Counsel directive), responding to cited 2008 and 2009 court cases that affected previously presumed legal status of lots of record of recorded historic subdivisions prior to 1937.

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