

MEMORANDUM

COUNTY OF SAN MATEO PLANNING AND BUILDING DEPARTMENT

DATE: April 13, 2018
TO: Development Review Center Staff and Public
FROM: Steve Monowitz, Community Development Director
SUBJECT: Revised Criteria for Legalization of Parcels Included Within Historic Recorded Subdivisions

Two appellate court cases, *Abernathy Valley, Inc. v. County of Solano* (2009; 173 Cal. App. 4th 42) and *Witt Home Ranch, Inc. v. County of Sonoma* (2008; 165 Cal. App. 4th 543), have significantly affected the previously presumed legal status of lots of record of subdivisions recorded prior to 1937.

Background

These two court decisions established that such subdivision maps recorded prior to 1915 (but not past 1937) did not effectively divide the lots (where undeveloped) for land use and planning purposes. All lots depicted in recorded subdivision maps past 1937 are considered legal and are not subject to the Certificate of Compliance process. These decisions concluded that one or more contiguously owned lots of such a subdivision could only be considered separately legal if it had been transferred, separately by deed conveyance apart from any surrounding or contiguous lots. Upon submittal of a chain of title describing the chronological progression of deed transfer of the subject lot(s) (submitted together with all referenced deed documents) from the subdivision's initial recordation up through the present day, a Certificate of Compliance (CoC), be it a Type A or Type B (see below), would then be necessary to record, pursuant to the provisions of the County Subdivision Regulations, Section 7134. Additional deed history documentation may be required for any adjacent lot(s) if deemed necessary to perform this analysis.

These court decisions supersede the County's previous policies and procedures stipulating that such lots, where they were part of a recorded subdivision predating the County's first adopted Subdivision Ordinance on July 20, 1945, were considered legal, and thus, required no additional research or legality procedures.

Parcels Not Requiring a CoC

Previously Merged Parcels. Any parcel(s) that have been previously merged, either by a County-mandated process (i.e., Emerald Lake, La Honda/Skyline, Miramar Mergers) or voluntarily, shall not be subject to obtaining a CoC, as long as it can be proven that the owner at that time of the merger did not own any adjacent unmerged parcels. If the necessary deed conveyance history is not available in the parcel's merger file, the present applicant will need to provide adequate chain of title documentation from that time to confirm.

Parcels Proposed for Merger. Where two or more undeveloped parcels are proposed for merger, a CoC will not be required as long as the applicant submits adequate deed documentation confirming that the owner does not own any adjacent/contiguous parcels at the time of the merger request. The recorded merger will resolve and acknowledge the parcel's legal status.

Merging a Vacant Parcel with a Developed Parcel. When formally merging an undeveloped parcel with one that is developed with a principally permitted use (as cited above), the undeveloped parcel shall not be subject to obtaining a separate Certificate of Compliance.

Previously or Currently Developed Parcels. Parcels that currently have (or had, as in the case of a house that has since been demolished) development shall not be subject to obtaining a CoC, providing that: (a) the development represents a principally permitted use in the respective zoning district (i.e., a residence in an R-1 District), and (b) was constructed with a building permit or was built prior to issuance of building permits (mid 1930s). A review of the parcel's permit history may be necessary to confirm that such development existed on the parcel as it is currently and legally described. On parcels where building permits have been issued, but where the building permit lapsed or was cancelled, may not be subject to obtaining a CoC as long as there was substantial work done based on the issued permit (i.e., a house foundation was built but nothing else followed). Parcels where past planning approvals have been issued (whether or not they have expired), but no building permits have followed, are subject to the CoC process.

Lot-Line Adjusted Parcels. Where a parcel's boundaries have previously been altered pursuant to a County-approved and recorded lot line adjustment (LLA), such parcel(s) shall not be subject to obtaining a Certificate of Compliance. This is because the LLA effectively assumed and thus re-affirmed the legal status of the parcels involved.

Previously Subdivided Parcels. Where a parcel's creation is the result of a previous County-approved subdivision, such parcel(s) shall not be subject to obtaining a Certificate of Compliance. On older subdivisions, however, it may be critical to confirm that the subject parcel(s)' current boundaries reconcile with the boundaries described or shown with the original approved subdivision map.

Proposed Subdivisions. Where a parcel is part of a currently proposed subdivision, such parcel(s) shall not be subject to obtaining a Certificate of Compliance. This is because the subsequent subdivision will, by its process and (if approved) recorded map, result in legally created parcels.

Need to Confirm Parcel Legality Prior to Development

Aside from the need to legalize the lots, the requirement to confirm parcel legality is mandated pursuant to:

1. The County Zoning Regulations, Section 6105 (first sentence), which states:

*"No permit for development shall be issued for any lot which is not a legal lot. For purposes of this ordinance, development does not include non-structural uses of property including, but not limited to, fences or water wells" [See *NOTE below regarding road and water wells]; and*

2 The County Subdivision Regulations, Section 7133.2, which states:

"The applicant shall demonstrate to the satisfaction of the Community Development Director that any parcel complies with the Map Act and the County Subdivision Regulations prior to the issuance of any permit or grant of approval to: a) Develop a previously undeveloped parcel; b) Increase residential density; or c) Significantly increase intensity of commercial, industrial, or agricultural uses.

***NOTE: Section 6105, as it refers to roads and water wells being exempted, is superseded if any such affected parcel is located anywhere in the Coastal Zone (CZ). All development in the CZ is regulated by the County Local Coastal Program, whose definition of development includes roads and water wells. Thus, in the CZ, as opposed to such parcels outside the CZ, the construction of a road or drilling of a well does trigger the need to confirm the subject parcel's legal status as stipulated in this policy.**

On lots within such historical subdivisions anywhere in unincorporated County areas (including even those in the Midcoast area where said lot(s) are located in the mapped "Single-Family Residential Categorical Exclusion Area"), parcel legality must be confirmed and a CoC (be it a Type A or B) recorded prior to the issuance of a Coastal Development Exemption (CDX) - or any discretionary planning permit - for a domestic or agricultural well or any other new development.

Required Process to Confirm Parcel Legality

Section 7134 cites the necessary criteria for determining whether a CoC Type A or Type B is required. In addition to the information required under Section 7134.1.b. (*Land Division History*), which is applicable for both Type A and B CoC, it is also critical that a Chain of Title be prepared and submitted that traces, chronologically, the deed conveyance of the subject parcel (comprised of the original lot(s) of record) as well as all contiguous parcels or lots around it (excluding lots located across a public or private roadway) starting from when the subject subdivision was first recorded up through the present day. The chain of title must be clear and include the name(s) of the grantors and grantees, the date, book and page (or other official County Recorder document number), along with attached exhibit copies (legible) of each referenced deed conveyance.

The chain of title for all surrounding, contiguous parcels (as cited above) can exclude any such parcels that are already developed.

Criteria that Qualifies a Parcel for a CoC (Type A)

If the conveyance of the subject parcel (e.g., its comprised lots) can be proven by such chain of title to have been conveyed separately from any of the lots around it prior to the County's first subdivision Ordinance (Ordinance # 595; effective July 20, 1945), then the parcel will likely qualify for a CoC (Type A). In such cases, the CoC application includes an application form, applicable CoC fees paid, and the recordation (by Planning staff) of the CoC (Type A) document (a minor recording fee will be required from the applicant, which staff will then pay at time of recordation). The applicant will receive a copy of the recorded document when staff receives its copy from the Recorder's Office, and the parcel's legal status will be marked in our Counter Zoning Maps as well as in the computer for future reference. The applicant may include the CoC (Type A) application, so as to be processed concurrently, with any other planning applications necessary. In such cases, the applicable fee cap may not apply. In the CZ, a CoC (Type A) does not require a Coastal Development Permit (CDP).

Criteria that Qualifies a Parcel for a CoC (Type B)

Upon review of the submitted chain of title as described above, if it is determined that any of the lots that comprise the subject parcel were not conveyed separately from the lots around it until after July 20, 1945, a conditional CoC (Type B) will be required. In this case, as stipulated in the County Subdivision Ordinance (Section 7134.2), the application may require a survey map of the subject parcel. Otherwise, assuming confirmation of the CoC (Type B), a similar document, as with the Type A, will need to be recorded as discussed above, also possibly including a Merger of the lots if necessary. In the CZ, since the CoC (Type B) is synonymous to a "land division" (which meets the definition of development as cited in Zoning Regulations Section 6328.11.1), a CDP is required, which is appealable to the California Coastal Commission.

NOTE 1: Where a chain of title shows that the first separate conveyance of a substandard size parcel or lot would not have otherwise been subdivided into parcel(s) of that size pursuant to the zoning district's current minimum lot size regulations, it may either: (1) not be possible to approve a CoC (Type B), or (2) if a CoC is recorded, it would include a condition of approval that either formally merges it with the "parent" adjacent parcel or prohibits any new, "stand-alone" residential development on the parcel/lot being legalized. Due to this risk, the applicant should compile the chain of title and submit it to the Planning Department for review prior to purchase of such a parcel and/or submittal of a formal CoC (Type B) application.

NOTE 2: Where a CoC is being sought separately for each of two adjacent parcels (where the original lots of record were part of an old recorded subdivision) AND the chain of title indicates that they have always been conveyed together since the original subdivision's recording, they may not each qualify for separate CoCs. In such cases (assuming they each meet the zoning district's minimum parcel size requirements), the only way to legally separate them may be through a formal subdivision application process. If that is the case, additional fees, the preparation of a surveyed tentative map, and additional applications (i.e., a CDP if located in the CZ) will be required.

Project Decision Status and Need to Legalize Parcels

Any planning case for any parcel under the cited circumstances, that has not yet resulted in a building permit being issued, will not qualify for a final decision for any development until the applicable documents to ensure parcel legality have been approved and recorded.

Such cases that have already been agendized for consideration by a decision maker may proceed, but the final decision shall be stayed until such time that the parcel's legal status has been confirmed as described above. To clarify this point, the "decision" letter will include the caveat that the Community Development Director is authorized to approve the project only after parcel legality is verified through the appropriate Certificate of Compliance process cited above. Once that occurs, a final decision letter will be issued with the approval conditions and the initiation of the decision's appeal period.

Such cases - and their respective parcels - that have already received "final" decisions but where associated building (or well drilling) permits have either not yet been applied for or have been applied for and not yet issued, shall be "tagged" to ensure that such parcel legality is confirmed before such building or well drilling permits can be issued.

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