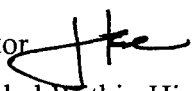


# MEMORANDUM

## COUNTY OF SAN MATEO PLANNING AND BUILDING DEPARTMENT

**DATE:** August 19, 2010  
**TO:** Development Review Center Staff and Public  
**FROM:** Jim Eggemeyer, Community Development Director   
**SUBJECT:** Revised Criteria for Legalization of Parcels Included Within Historic Recorded Subdivisions

Two recent 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 recorded historic subdivisions prior to 1937.

### **Background**

These two court decisions established that the recordation of such subdivision maps prior to 1915 (but not past 1937) did not mandate that the lots (where undeveloped) within such subdivisions constituted separate legal parcels for land use and planning purposes. These decisions concluded that one or more contiguously owned lots of such a subdivision could only be considered separately legal if it/they had been transferred, separately or together, by deed apart from any surrounding or contiguous lots. Upon submittal of a chain of title describing the chronological progression of deed transfer of the subject and surrounding lots (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.

These court decisions supercede 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. While previously recorded merged parcels, if undeveloped, are not exempt from the lot legality requirements mandated by the cited court cases, lots already developed with a principally permitted use are exempt from such requirements. Likewise, where a house previously constructed on a parcel is to be demolished and replaced with a new house, such parcel(s) (and the original lot(s) that comprise it) are also not subject to any additional legalization process since it has already been previously developed.

However, any undeveloped parcel – even where a Planning application has been applied for but has not yet been approved – is subject to these requirements. Only where a building permit has already been issued (even if not yet finalized) would the parcel not be subject to these requirements.

## **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:

*“Compliance of any parcel with the State Map Act and the County Subdivision Regulations shall be verified by the Planning Director prior to the issuance of any permit or grant of approval to develop a previously undeveloped parcel.”*

**\*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 where said lot(s) are located in the mapped “Single-Family Residential Categorical Exclusion Area”), parcel legality must be confirmed and CoC (be it a Type A or B) recorded prior to the issuance of a Coastal Development Exclusion (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. A colored map may also be required to clarify and reference the deed conveyances relative to the subject and surrounding lots. 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. Depending on the order in which the lots (comprising the subject parcel) were conveyed, it may be necessary to record a CoC (Type A) on each of the lots, to be followed with a recorded Merger, consolidating them altogether. The applicant will receive a copy of that document when staff receives its copy from Recorder's Office and the parcel's legal status will be marked in our Counter Zoning Maps 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 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's 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 CoC (Type B) will be required. In this case, as stipulated in the County Subdivision Ordinance (Section 7134.2), the application must also include 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, appealable to the California Coastal Commission.

#### Subdivision Applications

Parcels being subdivided do not need to go through a parcel legalization process prior to consideration of the subdivision itself because the legality of the lot being subdivided will be verified as part of the subdivision process and recordation of the requisite parcel map.

#### **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 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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(Revised 8/19/10)