

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

DATE: April 5, 2018

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), pursuant to Section 7134.2 of the County Subdivision Regulations, to confirm the legality of an unimproved 17,378 sq. ft. parcel located at the southwesterly corner of Bay View Road and Hermosa Road in the unincorporated Montara area of San Mateo County. This project is appealable to the California Coastal Commission.

County File Number: PLN 2016-00403 (Brasher)

PROPOSAL

The applicant has applied for a Coastal Development Permit and a Certificate of Compliance (CoC)/Type B to confirm the legality of the project site referenced above. A Type B CoC is required because the two existing parcels (consisting of Lots 20, 21, 22, 23, 24 and the previously abandoned 30-foot Sherman Road), were not conveyed separately from the surrounding adjacent lots (or together as a single parcel which the Certificate of Compliance will confirm) until December 1979, which was after July 1945, the effective date of the County's first subdivision ordinance.

The CoC ensures compliance with the County Subdivision Regulations which triggers the accompanying Coastal Development Permit as required by the County's Local Coastal Program.

RECOMMENDATION

That the Zoning Hearing Officer approve the Coastal Development Permit and the Certificate of Compliance (County File Number: PLN 2016-00403) 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

Owner/Applicant: Ned Brasher

Location: Southwesterly corner of Bay View Road and Hermosa Road, Montara

APN: 036-231-100 (Lots 20, 21 and 22) and 036-231-090 (Lots 23 and 24) and abandoned Sherman Road right-of-way.

Size: Approximately 17,378 sq. ft.

Existing Zoning: Resource Management Coastal Zone/Design Review/Coastal District (RM-CZ/DR/CD)

General Plan Designation: Very Low Density Residential-Rural

Parcel Legality: Lots 20, 21, 22, 23, 24 of Block 8 (including the abandoned and relocated Sherman Road access area), of "Map of the First Addition to Montara" recorded in San Mateo County Records on August 4, 1908, into Book 6 at page 27. Confirmation of the legality of these lots (as one single parcel) is the purpose of this application and discussed in Section A.3 of this report.

Existing Land Use (Lots 20, 21, 22, 23, 24 and abandoned roadway): Vacant

Water Supply: Water to be provided from domestic well proposed for APN 036-243-110 (see discussion in Setting);

Sewage Disposal: Septic

Flood Zone: FEMA Flood Insurance Rate Map designation indicates parcel as Zone X, Areas of 0.2% Annual Chance of Flood, Community Panel No. 06081C0138E, dated October 16, 2012.

Environmental Evaluation: Categorically exempt under provisions of Class 5, Section 15305 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act (CEQA) Guidelines

Setting: The subject parcel is located at the northwest corner of Hermosa Road and Bay View Road, east of Cabrillo Highway in Moss Beach. This existing undeveloped parcel has existing single family residences on adjacent parcels to the south and to the east. One large parcel to the north is vacant while a single large parcel to the west has been developed with a single family residence. The parcels have an average slope of approximately 14.5%, sloping downward from east to west. The parcels are accessible by Hermosa Road, which is a County-maintained roadway, up to the northerly subject parcel on the west (036-231-090) and 50 Hermosa Road (APN 026-243-120, developed with the owner's residence) to the east. While the parcels are located within the Montara Water & Sanitary District's service area, they're located approximately 1400 feet east of the Urban/Rural Boundary, which is too far to qualify for service connections

(the closest fire hydrant is 750 feet away on Grant Road near Valverde Road). However, there is a pending application (Case No. PLN2017-00017) whereby Mr. Brasher has applied for CDP, Grading and RM-CZ permits (see Site Plan, Attachment E) to construct a new residence and domestic well on a nearby vacant, legal parcel (APN 036-243-010) which he also owns (together with three other parcels, one of which is developed with the house in which he resides). All of the Brasher parcels are accessible from Hermosa Road at its terminus via a private road running southeasterly along the abandoned Bay View Road right-of-way. This project includes the installation of power lines (connected from lines terminating on Hermosa Road) and water lines (leading from the proposed well - to be utilized as a private water system) to serve all three of the vacant parcels owned by Mr. Brasher. These utility/water lines would be extended to and stubbed off at the property lines of all three of these parcels, which include the subject parcel for the CoC/CDP.

DISCUSSION

A. KEY ISSUES

1. Conformance with the General Plan

The parcel's General Plan Land Use Designation is "Very Low Density Residential – Rural", being located in the Rural Area east of the Urban/Rural Boundary, and subject to the General Plan's (GP) Rural Land Use policies. Policy 9.4 (*Land Use Objectives for the Rural Lands*) and, more specifically, Policy 9.23 (*Land Use Compatibility in Rural Lands*) seek to: a) encourage compatibility of land uses to promote the health, safety and economy and to maintain the scenic and harmonious nature of the rural lands, and b) promote land use compatibility by encouraging new development to be located clustered for the protection and use of vegetative, visual, agricultural and other resources. The project includes no development, but future development will require CDP, Design Review and RM-CZ Development Review permits to ensure full review and compliance of such proposed development to all applicable standards and requirements, specifically around clustering, design, protection of scenic and vegetative resources. While many parcels in this area were merged in the early 1980s to better ensure their rural nature and subsequent compliance with RM-CZ regulations, the subject parcel was not (thus the reason for the subject COC application to confirm its legal status). While its 17,378 sq. ft. size is smaller than many surrounding (and merged) parcels, it is expected that future development on the legalized parcel will be able to comply with all applicable policies and regulations as previously cited.

The "Very Low Density Residential - Rural" designation of this portion of Montara mandates a specific density of approximately (or less than) "0.2 dwelling units/net acre". However, since the RM-CZ District does not have a minimum parcel size requirement, the parcels (by their 'stand-alone' title

history together as a single parcel) qualify for legalization as a separate parcel pursuant to the CoC process, the project density is not in conflict with the cited Land Use density. Please refer to Section A.2. of this report for discussion of project compliance with RM-CZ regulations.

Pursuant to (Transportation Element) 12.17 (*Vacation of County Streets and Easements*), the status of Sherman Road – which runs between the two subject parcels and terminates at Hermosa Road – merits discussion. The policy mandates consideration of: a) whether access is available to existing parcels and developed areas adjacent to the subject areas, and b) whether the area to be vacated is not suitable for non-motorized use. The CoC application assumes that the 30-foot wide Sherman Road access is relocated to the north side of the northerly parcel (036-231-090). Historically, Sherman Road was rejected by the Board of Supervisors upon adoption and recordation of the 1908 “Map of the First Addition to Montara” subdivision and formally abandoned (for usable road access) by the County in 1979. Since, legally, all the property owners of the cited 1908 subdivision retain legal access rights to Sherman Road, County Counsel has determined that its proposed relocation to the northern edge of the cited parcel is feasible, assuming the following tasks are completed: 1) the adjacent parcel owner to the west (APN 036-231-120) quitclaims his interest in the subject access (as it crosses his parcel), and 2) the applicant submit a revised legal description of the deed for the subject parcels that accurately relocates it to the northerly edge of the north parcel (APN 036-231-090). These requirements shall be met prior to recording the CoC, as conditioned in Attachment A.

2. Conformance with the Local Coastal Program (LCP)

Under the LCP’s “Locating and Planning New Development Component,” Policy 1.8 (*Land Uses and Development in Rural Areas*) a) allows new development in rural areas only when demonstrated that it will not have significant adverse impact on coastal resources, b) permits land uses designated on the LCP Land Use Plan Map and conditional uses up to the densities as specified in Tables 1.2 and 1.3, and c) require density credits for new non-agricultural land uses, including residential (as determined pursuant by applying Table 1.3). While this application includes no development at this time, the development proposed on this parcel will be of a single-family dwelling (SFD). There are no mapped coastal resources on or near the project site, and the parcel (despite its size) will generate one density credit, whose allocation of 315 gallons of water per day (Policy 1.8 c.(2)(a)) allows a SFD and other appurtenant uses.

Pursuant to Policy 1.13 (*Definition of Rural Residential Area*), this area of Montara is defined as rural lands outside of the Urban/Rural Boundary because it is subdivided (1908 “Map of the First Addition to Montara”) with residential uses at general densities less than one dwelling unit/5 acres,

adjacent to urban areas (the R-1 zoned Montara area to the west), and partially served with utility lines (not sanitary or domestic water in any close proximity, but some limited water lines serving fire hydrants and power (PG&E) utility lines.

Because the subject parcel is part of the recorded “Montara: First Addition” Subdivision, Policy 1.14 (Designation of Rural Residential Areas) confirms that this area is considered a Rural Residential Area. Policy 1.15 permits in such rural residential areas the land uses designated on the LCP Land Use Map and at densities specified in Table 1.2. The Table (2006 Updated Buildout Estimate) stipulates a buildout of the Midcoast RM-CZ and PAD zoned areas of this portion of Montara of 160 units, a limit that has not yet been reached. And pursuant to Table 1.3 (*Maximum Density Credits*), while this parcel is only 0.39 acres, all legal parcels (which the subject CoC will confirm) are designated a minimum of 1 density credit. This would allow the parcel’s development in the future, assuming compliance with all LCP policies, DR and RM-CZ regulations.

Finally, LCP Policy 1.28 (Legalizing Parcels) requires a Coastal Development Permit (CDP) when issuing CoCs (Type B) to legalize parcels. The applicant has submitted an application, along with the appropriate fees, for said permit. Policy 1.29 provides standards for review when legalizing parcels. On undeveloped parcels created before Proposition 20 (effective date January 1, 1973), it must be determined that the parcel configuration will not have any substantial adverse impacts on coastal resources, in conformance with the standards of review of the Coastal Development District regulations. Permits to legalize this type of parcel shall be conditioned to maximize consistency with LCP resource protection policies. There is no evidence or reason to believe that the current parcels’ legalization would result in future development impacting coastal resources, since a review of the parcel does not reveal proximity to any coastal resources regulated by the LCP.

There are no sensitive habitats on or near the parcel (Policy 7.1) or hazards (Policy 9.1) on or near the parcel. Thus the proposed parcel legalization complies with these resource protection policies.

3. Conformance with Zoning Regulations

While the parcel is zoned Resource Management District-Coastal Zone/Design Review (RM-CZ/DR), the project includes no development and thus does not require a RM-CZ Development Review or Design Review permit. The parcel’s 17,378 sq. ft. size is relatively small compared to other parcels of the same zoning, however the proposal of any future development (e.g. a SFD as previously stated) on the parcel will require RM-CZ and DR permits with the Design Review to be considered by the Coastside Design Review Committee, since LCP Map 1.3 shows it to be located within the

Midcoast Project Area. A CDP will be required as well to ensure any impacts to the surrounding area are minimized. The ability of proposed residential development to comply with minimum setback requirements (50 feet along Hermosa Road and 20 feet along all other sides), and for such development to accommodate an on-site septic system (it's domestic water supply would be provided from a nearby parcel as previously discussed in the "Background/Setting" section of this report) has already received preliminary approval by the County Environmental Health Department (who's completed successful septic percolation testing on the site), since the parcel would not be able to connect with any services provided by the Montara Water and Sanitary District. 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.

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 recent court case decisions, the subject lot's legality must be confirmed because it is an undeveloped parcel of an antiquated subdivision. 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 lots comprising this subject project parcel were conveyed separately from any surrounding lots 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.

The subject lots were initially part of the 1908 Subdivision, "Map of the First Addition to Montara". The submitted Chain of Title and Grant Deed data confirms that no deed data or chain of title documents submitted for the years prior to 1945 include the subject lots as a single parcel separate from any others. Given that the subject lots were not conveyed separately until 1986, a CoC (Type B) is required to confirm the legality of the land division. 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 single parcel resulting from the recorded CoC, 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 be applicable to any subsequent development on the property. Road access to the subject parcels exists directly from Hermosa Road, but is not maintained by the San Mateo County Public Works Department. Any required improvements of that road to County Standards will be required at the time of future development. As stated earlier in this report, potable domestic water and utility power lines will be extended to the subject site as part of a separate and pending CDP application. 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.” Otherwise there are no conditions necessary to include prior to recording the CoC document.

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 Use Limitations, which allows minor alterations in land use limitations in areas with an average slope of less than 20%, and that do not result in any changes in land use or density. As stated previously, the average slope gradient across the parcel is 14.5% and the process and documentation to legalize the subject lot represent a minor alteration in land use limitation applicable to the subject parcel.

C. REVIEWING AGENCIES

County Counsel

ATTACHMENTS

- A. Recommend Findings and Conditions of Approval
- B. Location Map and Vicinity Map
- C. Original “Map of Montara”
- D. Assessor’s Parcel Map
- E. Site Plan for PLN 2017-00017 (Showing all Parcels Owned by Brasher)

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County of San Mateo
Planning and Building Department

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2016-00403

Hearing Date: April 5, 2018

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 (CEQA) Guidelines (Minor Alterations in Land Use Limitations), which allow minor alterations in land use limitations in areas with an average slope of less than 20%, and that do not result in any changes in land use or density. The average slope gradient across the parcel is 14.5% and the project represents a minor alteration in land use limitation applicable to the subject parcel.

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. The legalization will not affect any sensitive habitats, visual resources, or public access to and along the coast.

6. That the project conforms to the applicable policies of the Local Coastal Program (LCP) as discussed.

RECOMMENDED CONDITIONS OF APPROVAL

Current Planning Section

1. This approval applies only to the proposal as described in those plans, supporting materials and reports as approved by the Zoning Hearing Officer on April 5, 2018. 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 20, 21, 22, 23, 24, Block 8, including the relocated Sherman Road access, as one single, legal parcel, shall be recorded prior to the issuance of any other permits related to any development on this property. Prior to recordation of the Certificate of Compliance, the application shall submit, for review and approval by the Community Development Director, both a quit claim deed (from the owner of the adjacent parcel, APN 036-231-120) and a revised legal description of the single legal parcel showing the accurate relocation of the 30-foot access easement towards the northerly edge of the current parcel 036-231-090.
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. The approval and issuance of such permit shall require that an adequate domestic water source and on-site sanitary sewerage provisions are included and constructed upon issuance of the required building permits.
4. The Certificate of Compliance (Type B) required to establish the legality of the existing parcels (APNs 036-231-090 and 036-231-100 taken together as one) shall be recorded by the project planner.
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 most currently charged by the Recorder's Office. The project planner will confirm the amount prior to recordation.

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San Mateo County Zoning Hearing Officer Meeting

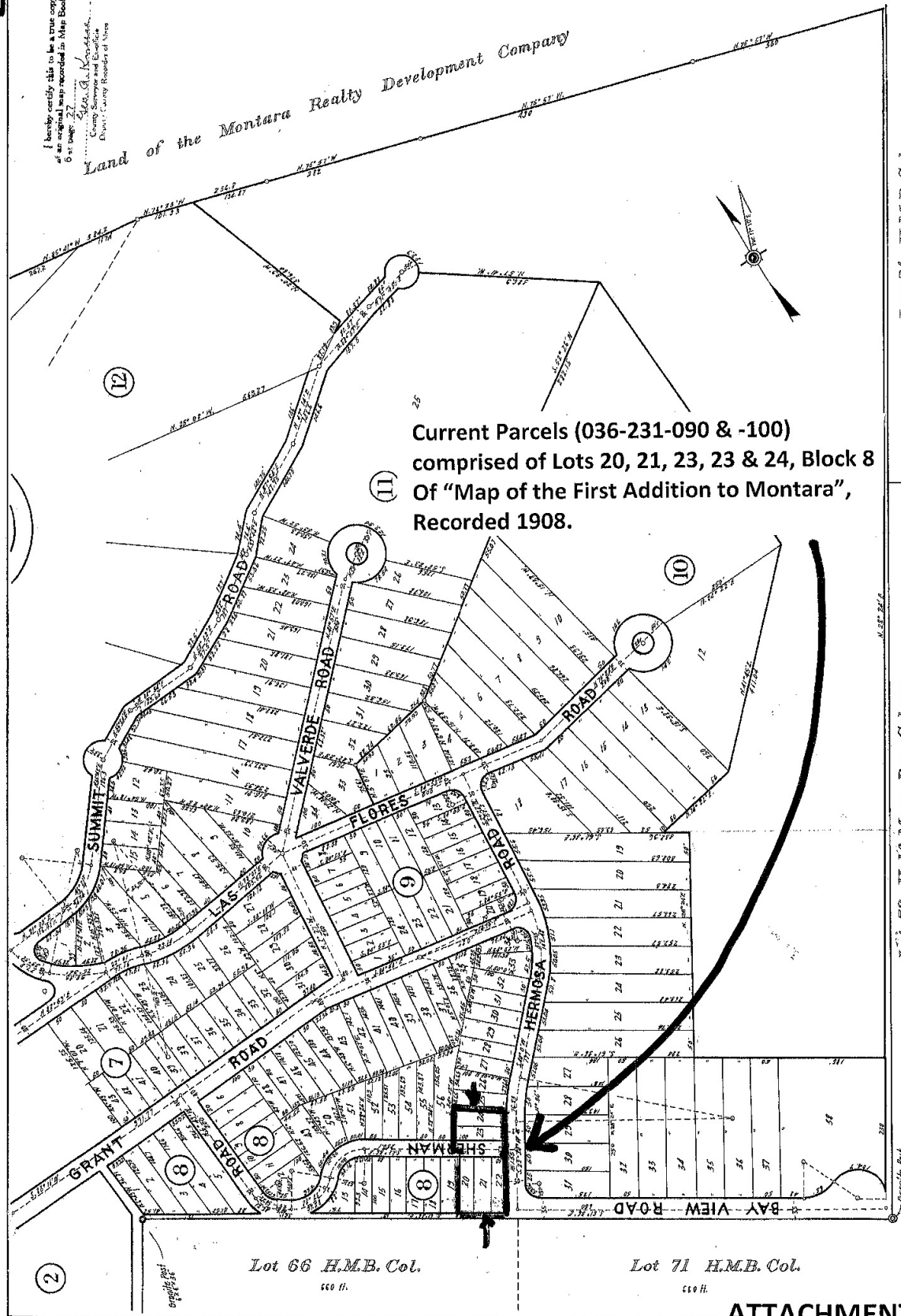
Owner/Applicant:

Attachment:

File Numbers:

I hereby certify this to be a true copy of an original map recorded in Map Book 6 at page 27
Map of the Montara Realty Development Company
GEO. G. N. [unclear]
County Surveyor and Equalizer
County of Santa Clara, California

Land of the Montara Realty Development Company



Current Parcels (036-231-090 & -100) comprised of Lots 20, 21, 23, 23 & 24, Block 8 Of "Map of the First Addition to Montara", Recorded 1908.

Lot 66 H.M.B. Col.

Lot 71 H.M.B. Col.

Lot 73 Half Moon Bay Colony.

Lot 74 H.M.B. Col.

ATTACHMENT C

San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant:

Attachment:

File Numbers:

MAP OF THE FIRST ADDITION TO MONTARA San Mateo County, California.

Scale 1 in = 100 ft D.W.Park, Surveyor.

The Montara Realty Development Company is owner of and Madeline Hankrich, Harry Sills, Harry Wagner and C.F. Haas, its Members...

THE MONTARA REALTY DEVELOPMENT COMPANY Harry Wagner, President C.F. Haas, Secretary

Resolved: that the map of that certain tract of land in which this Corporation, Montara Realty Development Company is interested...

Do if further resolved: that said map be entitled Map of the First Addition to Montara, San Mateo County, California...

THE MONTARA REALTY DEVELOPMENT CO. C.F. Haas, Secretary.

State of California } ss. County of San Mateo } August 10th 1928 day of July, 1928 before me, Edwin Fitzpatrick, a Notary Public...

Edw. E. Fitzpatrick Notary Public in and for said County of San Mateo.

State of California } ss. County of San Mateo } August 3rd day of August of the year one thousand nine hundred and eight before me, Edwin Fitzpatrick a Notary Public...

Edw. E. Fitzpatrick Notary Public in and for said County of San Mateo, State of California.

We, Harry Wagner, President and C.F. Haas, Secretary of The Montara Realty Development Company, a Corporation, hereby certify that this map showing subdivisions of certain lands in which said Corporation is interested...

Harry Wagner, President C.F. Haas, Secretary.

Subsequent to that portion of Susan Villa Road lying north of block no. 2, and that portion of Susan Road lying south of block no. 3 and 7, as delineated and designated on this map...

John H. Hoeh, Clerk of said Board.

Note: The corners of the lots of the lots are the same as the corners of the streets which bound the lots...

I do hereby certify that there are no unpaid State, County, Municipal or other taxes against the lands or any part of the lands shown on the within and accompanying map.

W.R. Underhill, County Auditor David A. Schaeffer.

Filed in request of Montara Realty Development Co. Aug 3rd A.D. 1928 at 30, main post & clock E.M. San Mateo County Records.

J.F. Johnston, County Recorder by Emma E. Martin, Deputy.

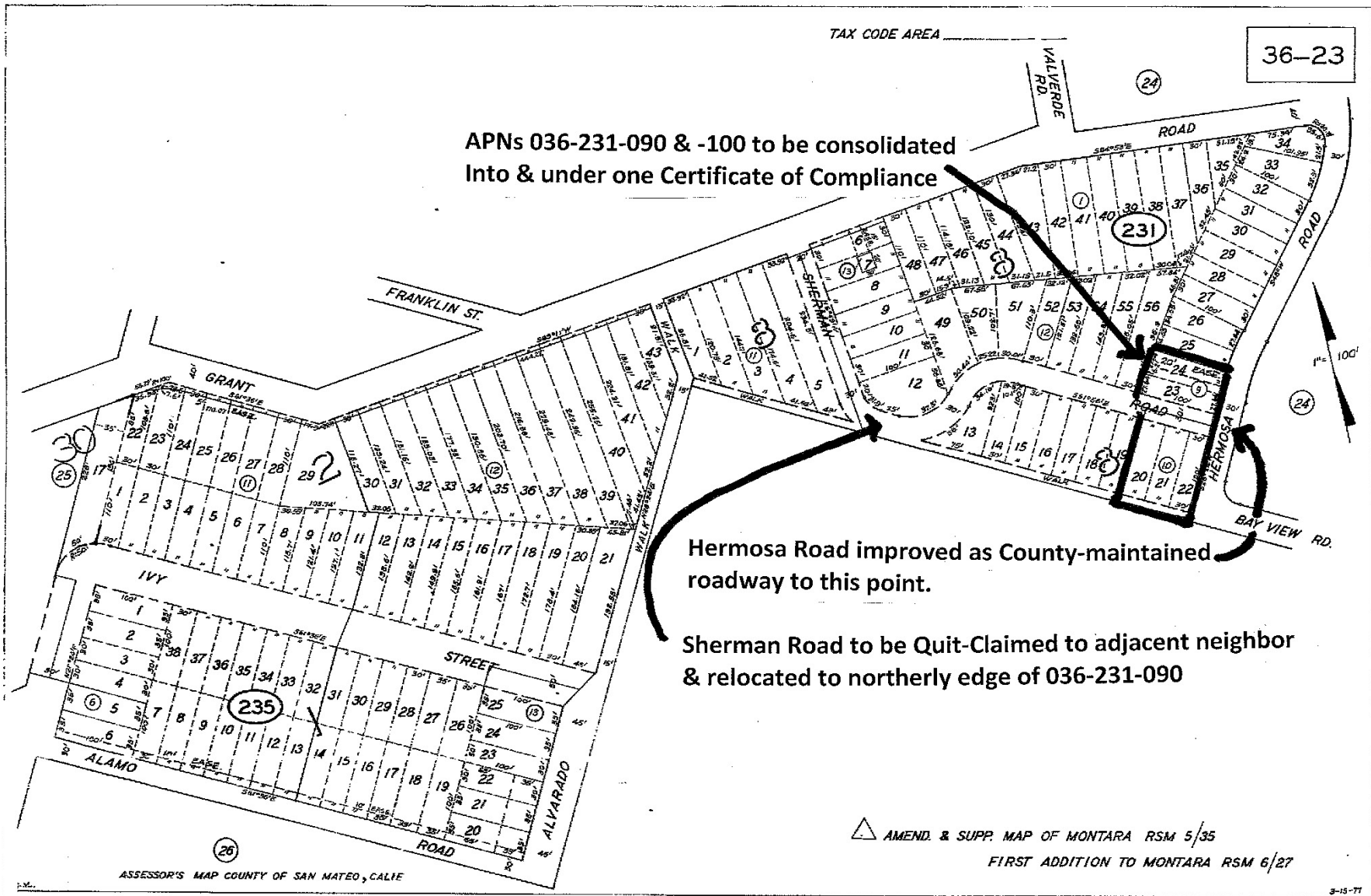
I hereby certify this to be a true copy of an original map recorded in Map Book B at page 27. Geo. O. Henderson, County Surveyor and Ex-officio Deputy County Recorder of Alameda.

San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant:

Attachment:

File Numbers:



San Mateo County Zoning Hearing Officer Meeting

Owner/Applicant: _____

Attachment: _____

File Numbers: _____

