

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

W-10b



November 21, 2003

RECORD MANAGEMENT COPY

To: Coastal Commissioners and Interested Parties

From: Peter Douglas, Executive Director
Charles Lester, Deputy Director
Chris Kern, District Manager

Subject: 2-03-02 – EDD (Bruce)
Public hearing and Commission determination of appealability for purposes of applicable hearing and notice procedures, pursuant to California Code of Regulations, Title 14, Section 13569, for exemption from coastal development permit requirements granted to Kenneth and Patricia Bruce by San Mateo County for a lot line adjustment on 13th Street in Montara, APNs 037-014-170, -180, and -190 in San Mateo County.

Summary of Staff Recommendation

On September 2, 2003, staff received a Notice of Final Local Decision from San Mateo County indicating that the County had granted a coastal development permit (CDP) exemption to Kenneth and Patricia Bruce for a purported lot line adjustment between three contiguous parcels of undetermined legality located on 13th Street in Montara (APNs 037-014-170, -180, and -190). Staff informed County Planning staff that the notice was deficient because the purported lot line adjustment is development that is not exempt from CDP requirements and because County approval of the purported lot line adjustment would be appealable to the Commission. Staff also informed the County of the administrative procedures provided by the Commission's regulations for resolution of questions or disagreements concerning whether a development is categorically excluded, non-appealable, or appealable for purposes of notice, hearing and appeals procedures (14 CCR §13569).

Staff recommends that the Commission determine that:

- The purported lot line adjustment is development that is not exempt from the CDP requirement of the Coastal Act; and
- Any action by the County authorizing the purported lot line adjustment is appealable to the Coastal Commission.

1.0 STAFF RECOMMENDATION

1.1 Motion

I move that the Commission reject the Executive Director's determination that the purported lot line adjustment approved by San Mateo County on August 11, 2003, for Assessor Parcels 037-014-170, -180, and -190 requires a coastal development permit, and that any action by the County authorizing the purported lot line adjustment is appealable to the Coastal Commission.

Staff recommends a NO vote. Failure of this motion will result in: (1) the Commission upholding the Executive Director's determination that the purported lot line adjustment exempted from coastal development permit requirements by San Mateo County on August 11, 2003 for San Mateo County Assessor Parcel Numbers 037-014-170, -180, and -190 is subject to the coastal development permit requirements of the Coastal Act and that any action by San Mateo County authorizing the purported lot line adjustment is appealable to the Coastal Commission; and (2) the adoption of the following resolution and findings. A majority vote of the Commissioners present is required to pass the motion.

1.2 Resolution

The Commission, by adoption of the attached findings, determines consistent with Section 13569 of Title 14 of the California Code of Regulations, that the purported lot line adjustment exempted from coastal development permit requirements by San Mateo County on August 11, 2003, for Assessor Parcels 037-014-170, -180, and -190 requires a coastal development permit, and that any action by the County authorizing the purported lot line adjustment is appealable to the Coastal Commission.

2.0 Findings and Declarations

The Commission finds and declares as follows:

2.1 Authority for Determination

Title 14, Section 13569 of the California Code of Regulations states:

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request. [Emphasis added.]

After the certification of a LCP, the Commission is authorized to resolve disputes regarding the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable). The purpose of the dispute resolution regulation is to provide for an administrative process for the resolution of disputes over the status of a particular project. Such a process is important when two agencies, here San Mateo County and the Coastal Commission each have either original or appellate jurisdiction over a given project. The Coastal Act was set up to give certified local governments the primary permitting authority over projects proposed in the Coastal Zone but to allow the Commission oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding the status of a particular project and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. The local government may initiate the request or forward a request made by an applicant or other interested party to the Commission's Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

The Executive Director is required to render a determination (14 CCR §13569(c)) and, in the event the local government disagrees with the opinion, "the Commission *shall* hold a hearing for purposes of determining the appropriate designation for the area" (14 CCR §13569(d)). It is clear from a plain reading of the regulation, that where the Executive Director and the local government disagree, participation is not optional and that if a system for dispute resolution is to be effective, the requirements for implementation of the process must be observed by both the Coastal Commission and the local government. The Executive Director has therefore made a determination, the County disagrees, and the Commission will hear the matter.

2.2 Local Government Action

On August 11, 2003, the San Mateo County Planning Administrator Director approved a coastal development permit for single-family residence and domestic well and approved a purported lot line adjustment for Assessor Parcel Numbers 037-014-170, -180, and -190 (Exhibits 1 and 2). The County did not require a coastal development permit for the purported lot line adjustment.

The County Planning Department subsequently transmitted to Coastal Commission staff a Notice of Final Local Decision dated August 28, 2003 and received on September 2, 2003 (Exhibit 3) stating:

- On August 11, 2003, the County had conditionally approved a coastal development permit for the subject single-family residence and domestic well;
- The County appeal period for this action ended on August 27, 2003; and
- The County action is not appealable to the Coastal Commission.

2.3 Executive Director's Determination

By letter dated September 4, 2003, Commission staff informed the County Planning Department that the Notice of Final Local Decision described above was erroneous because (Exhibit 4):

- A coastal development permit is required for the purported lot line adjustment and
- County approval of a lot line adjustment would be appealable to the Coastal Commission pursuant to Coastal Act Section 30603(a)(4) because lot line adjustments are not designated as the principal permitted use under the zoning ordinance or zoning district map.

Section 6328.3(r) of the County's certified LCP states that a project appealable to the Commission includes any approval required before a development may proceed. Section 6328.16 of the County's certified LCP specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." Section 13571 of the Commission's regulations requires that a local government's Notice of Final Local Action on appealable development must include the procedures for appeal of the local decision to the Commission. Section 13571 of the Commission's regulations states:

(a) Notice After Final Local Decision. . . . Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13570, the local government shall notify by first class mail the Commission and any persons who specifically requested notice of such action . . . of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.

The August 28, 2003 County Notice of Final Local Decision did not meet the requirements for such notice specified by Section 13571 of the Commission's regulations.

Where the County's notice of final local action does not meet the requirements of Section 13571, the local government action is not effective. Section 13572 of the Commission's regulations state that:

A local government's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless either of the following occur:

...

(b) the notice of final local government action does not meet the requirements of Section 13571. [Emphasis added.]

Section 13571 of the Commission's regulations requires that a Notice of Final Local Action provide the procedures for appeal of the local decision to the Commission. The County's Notice of Final Local Action did not contain these required procedures. Consequently, in accordance with Section 13572 of the Commission's regulations, the County's Notice of Final Local Decision was defective and the County's final action on the subject lot line adjustment remains ineffective.

2.4 Commission Determination

The Commission will defer resolution of the issues regarding the legal status of the subject lot or lots until after the County has processed a CDP application for the purported lot line adjustment, which would be appealable to the Commission. Accordingly, the issues before the Commission at this time are:

- Is a CDP required for the purported lot line adjustment; and
- Is approval by the County of the purported lot line adjustment appealable to the Coastal Commission?

2.4.1 Coastal Development Permit Requirement

Coastal Act Section 30600 states in relevant part:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit. [Emphasis added.]

Lot Line Adjustments are "Development" under the Coastal Act

Coastal Act Section 30106 defines "development" as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. [Emphasis added.]

In the past, certain parties have contended that the coastal development permit requirement of Coastal Act Section 30600 does not apply to lot line adjustments because lot line adjustments are

not “development” under the Coastal Act. This question has been resolved in the Commission’s favor by the California Court of Appeal (*La Fe v. Los Angeles County* (1999) 73 Cal.App.4th 231).

The Court of Appeal held in its published decision in *La Fe* that lot line adjustments are development as defined in Section 30106 both because lot line adjustments constitute a division of land and because lot line adjustments result in a change in the density or intensity of use of land. The Court of Appeal states:

Specifically, “development” means “change in the density or intensity of use of land, including but not limited to, subdivision ..., and any other division of land, including lot splits....” The Legislature’s stated intent was to grant the commission permit jurisdiction with respect to any changes in the density or intensity of use of land, including any division of land. Section 30106 by its terms recognizes that a subdivision of land or a lot split can result in changes in the density or intensity of use of property. A lot line adjustment can, as here, have the same effect. More to the point though, section 30106 explicitly applies to a “subdivision ... and any other division of land...” A lot line change constitutes a “division of land.” The key point is that section 30106 applies to a “division of land” and such occurred here. [Emphasis added.]

...

[P]laintiff’s proposed adjustment of the lot lines between parcels of land that they owned constituted development that fell within the permit jurisdiction of the California Coastal Commission under the California Coastal Act of 1976...

The broadly worded Coastal Act definition of development is intended to encompass a broader range of land divisions than those covered by the Map Act. Adjusting the boundary of a lot divides land not previously divided, even though the number of parcels is not increased. In addition, this change in the configuration of parcels affects the density, intensity, location, or character of subsequent development allowable on the resulting parcels. Indeed, such changes are the reason lot line adjustments are undertaken. These kinds of changes in development potential are the same as those reviewed by the Commission in connection with subdivisions, lot splits, and other land divisions.

The *La Fe* decision was published on June 30, 1999, more than four years prior to the Planning Administrator’s locally appealable decision on the subject lot line adjustment on August 11, 2003. Thus, to the extent that the County may have relied on the position that lot line adjustments are not development as defined under the Coastal Act in determining the purported lot line adjustment to be exempt from coastal development permit requirements, such determination is contrary to the prior published decision of the California Court of Appeal in *La Fe*.

LCP Permit Exemption for Lot Line Adjustments is Invalid

San Mateo County Counsel contends that lot line adjustments are exempt from coastal development permit requirements in the San Mateo County Coastal Zone pursuant to County Zoning Code Section 6328.5, which provides in relevant part:

SECTION 6328.5. EXEMPTIONS. The projects listed below shall be exempt from the requirement for a Coastal Development Permit. Requirements for any other permit are unaffected by this section.

...

(i) Lot line adjustments not resulting in an increase in the number of lots.

The County contends that because Zoning Code Section 6328.5(i) is contained in the certified LCP, lot line adjustments are exempt from coastal development permit requirements.

The Commission does not dispute that San Mateo County Zoning Code Section 6328.5(i) states that lot line adjustments not resulting in an increase in the number of lots are exempt from coastal development permit requirements, nor that Section 6328.5(i) is contained in the County's certified LCP. However, the LCP must be interpreted in light of and consistent with the Coastal Act, its implementing regulations and any judicial rulings affecting the implementation of those provisions. Examples of such judicial rulings include *La Fe* as well as *Nollan v CCC* (1987) 483 US 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374, *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, *Sierra Club v. CCC* (1993) 15 Cal Rptr2d 779, and *Bolsa Chica Land Trust v. Superior Court* (1999) 83 Cal. Rptr. 850. The Commission therefore finds that lot line adjustments are not exempt from coastal development permit requirements because Zoning Code Section 6328.5(i) is in conflict with state law. As stated by the Court of Appeal in *La Fe*, the requirement that persons who undertake development must obtain a coastal development permit or waiver is one imposed by law, not by the Commission:

The requirement that plaintiffs obtain a coastal development permit or waiver [for a lot line adjustment] was one imposed by law, not by the county.

As also stated by the Court of Appeal in *La Fe*, "development" as defined in section 30106 includes lot line adjustments because section 30106 explicitly applies to any change in the density or intensity of use of land, including a subdivision and any other division of land including lot splits and because a lot line adjustment is a division of land.

Accordingly, after certification of an LCP, certain development review authority is delegated to the local government, but the permit requirement remains one of state law. Certification of a local government's LCP does not empower the local government to circumvent the permit requirement of the Coastal Act. Neither the County through the adoption of a zoning ordinance nor the Commission through the certification of an LCP can exceed the authority granted to it under the Coastal Act either to regulate or to exempt from regulation development in the Coastal Zone. In fact, in accordance with Coastal Act Sections 30512 through 30513, the Commission's review of a LCP is limited to a determination that the coastal development permit review standards submitted by the local government do or do not conform with the requirements of Chapter 3 of the Coastal Act. Thus, the Commission's review of a LCP does not extend to the Chapter 7 provisions of the Coastal Act that establish coastal development permit requirement and coastal development permit exemptions.

Chapter 7 of the Coastal Act provides for specific limited exemptions from the permit requirement of Section 30600(a). These exemptions are for emergency work that meets the criteria described in Sections 30600(e)(1) and 30600(e)(2) and for development described in Coastal Act Sections 30610 and 30610.1. Both the Commission's and the County's authority to

exempt development from the coastal development permit requirement is strictly limited to that authorized by Coastal Act Sections 30600(e) and 30610.

None of the permit exemptions contained in Coastal Act Sections 30600(e), 30610, and 30610.1 exempt lot line adjustments or any other type of land division. The one possible mechanism through which lot line adjustments may be excluded from the permit requirements of the Coastal Act is through the adoption of a categorical exclusion order in accordance with Section 30610(e). However, categorical exclusions may not be adopted as part of the LCP process because the Commission serves as a lead agency rather than a functionally equivalent agency for purposes of CEQA when adopting a categorical exclusion and the categorical exclusion is subject to different voting requirements than apply to certification of a LCP.

Coastal Act Section 30610 states in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

...

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program. [Emphasis added.]

San Mateo County has an approved categorical exclusion order that excludes from coastal development permit requirements specific categories of development within a specifically defined geographical area. However, the categories of development described in the County's exclusion order do not include lot line adjustments or any other type of land division. Thus, as the County acknowledges, lot line adjustments are not excluded from the coastal development permit requirement under the County's categorical exclusion order. The Coastal Act provides no other authority by which lot line adjustments may be determined exempt from the coastal development permit requirement. Therefore, the Commission finds that lot line adjustments are not exempted from the coastal development permit requirements of the Coastal Act by Zoning Code Section 6328.5(i).

In recognition that lot line adjustments are in fact subject to regulation under the Coastal Act and certified LCPs, the State Legislature amended Section 66412(d) of the State Government Code effective January 1, 2002, adding the following provision:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. [Emphasis added.]

The Commission understands the term "any applicable coastal plan" as used in Government Code Section 66412(d) to refer to the San Mateo County certified LUP. The legislature authorizes local governments to require the County to review lot line adjustments for conformity with the LUP as provided above in recognition of the fact that lot line adjustments are not exempt from regulation under the Coastal Act. The Commission therefore finds that the recently

enacted amendment to Government Code Section 66412(d) further supports the Executive Director's determination that lot line adjustments are not exempted from the coastal development permit requirements of the Coastal Act by Zoning Code Section 6328.5(i).

2.4.2 Appealability

Coastal Act Section 30603(a) states in relevant part:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

...

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500). [Emphasis added.]

The property affected by the purported lot line adjustment is zoned R-1/S-17/DR. As with other divisions of land, lot line adjustments are not designated as the principal permitted use under the applicable San Mateo County Zoning District (R-1/S-17/DR) or the applicable zoning district map (Exhibit 7). Section 30604(a)(4) confers appellate jurisdiction over any "development" approved by a coastal county that is not designated as the principal permitted use under a county's approved zoning ordinance (Exhibit 5). As discussed above, a lot line adjustment constitutes development under Section 30106 of the Coastal Act but a lot line adjustment is not designated as the principal permitted use in the R-1/S-17/DR Zoning District (Exhibit 7). The County's zoning ordinance fails to designate one principally permitted use for the R-1/S-17/DR Zoning District. In addition, none of the uses enumerated in the R-1/S-17/DR Zoning District include lot line adjustments (Exhibit 7). Because a lot line adjustment constitutes development but is not identified as the principal permitted use of the R-1/S-17/DR Zoning District, any approval of a coastal development permit for a lot line adjustment in the R-1/S-17/DR zone is appealable to the Coastal Commission. Therefore, the Commission finds that County authorization of the purported lot line adjustment is appealable to the Commission pursuant to section 30603(a)(4) of the Coastal Act.

Additionally, the County's certified zoning ordinance further recognizes that the purported lot line adjustment does not qualify as a "principal permitted use" and is therefore development appealable to the Commission pursuant to Section 30603 of the Coastal Act. The County defines "principal permitted use" as "*any use representative of the basic zone district allowed without a use permit in that underlying district*" (See Section 6328.3(q) of the County's Zoning Code-Exhibit 5). As discussed above, a lot line adjustment is not listed as a permitted use in the County's zoning ordinance and is thus not a use representative of the basic zone district. Further, pursuant to Zoning Code Section 6133(3)(b)(1)(a) - (Exhibit 6), a use permit would be required for the purported lot line adjustment because one of the purported parcels to be adjusted is an unimproved, nonconforming parcel less than 3,500 sq. ft. in size in a zone that requires a 5,000 sq. ft. minimum lot size. Specifically, Section 6133(3)(b)(1)(a) (Exhibit 6) of the City's Zoning Code states that "*[d]evelopment of an unimproved non-conforming parcel shall require the issuance of a use permit when... (c) the required parcel size is 5,000 sq.ft. but the actual nonconforming parcel size is <3,500 sq. ft.*" As stated above, a lot line adjustment constitutes "development" under 30106 of the Coastal Act. In the case of the subject property, the purported lot line adjustment would occur in a zone where the minimum lot size is 5,000 sq. ft. and would

involve purported parcels <3,500 sq. ft. Thus, since one or more of the purported parcels is <3,500 sq.ft., the purported lot line adjustment would require a use permit because it constitutes development of that unimproved non-conforming parcel <3,500 sq.ft. in a zone where the minimum lot size is 5,000 sq.ft. Thus, pursuant to Section 6133(3)(b)(1)(a) of the County's zoning code, the purported lot line adjustment is development that would require a use permit and does not constitute a principally permitted use in the County's zoning district. As such, the purported lot line adjustment between contiguous parcels of undetermined legality is appealable to the Commission under Section 30603(a)(4) of the Coastal Act because it is "development approved by a coastal county that is not designated as the principal permitted use" under the County's certified zoning ordinance.

The County argues that lot line adjustments are not listed as the principal permitted use in any County zoning districts because the authority for lot line adjustments is derived from the Subdivision Map Act and not from the County's zoning power and that lot line adjustments are not properly considered uses of property in the zoning context. However, the County's position ignores the fact that Section 30603(a)(4) of the Coastal Act specifies that "*any development* approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance" is appealable to the Commission. As stated above, lot line adjustments are development and they are not identified as the principal permitted use in the certified zoning ordinance.

In addition, the County's argument that lot line adjustments are not listed as the principally permitted use in any zoning district because lot line adjustments are not properly considered uses also fails because the County's zoning ordinance itself lists divisions of land as a use requiring a use permit. See for example zoning code section 6227(b)(6) which states:

The following uses shall be permitted in the Community Open Space Conservation District subject to the securing of a use permit in each case:

...

6. Division of land, . . .

The County also asserts that lot line adjustments are not appealable to the Coastal Commission because County approval of a lot line adjustment is not an action on a coastal development permit application. However, as stated above, in exercising its authority under 14 CCR §13569, the Commission has determined that the purported lot line adjustment constitutes development that requires a coastal development permit that is appealable to the Commission. Thus, whether or not the Commission considers the County's action on the lot line adjustment as an action on a coastal development permit application, the Commission has separately determined that the purported lot line adjustment constitutes development that requires a coastal development permit and that such County approval of the purported lot line adjustment is appealable to the Commission.

2.4.3 Review of Lot Line Adjustments in the Coastal Zone is an Issue of Statewide Significance

Lot line adjustments can result in a change in the density or intensity of use of land in a manner that conflicts with the resource and/or public access protection policies of a certified LCP and the Coastal Act.

In *La Fe*, the Commission denied a coastal development permit application for a lot line adjustment because it would have made all of the affected lots accessible to a public street, but the street was insufficient to provide access to the developed lots by fire fighting equipment. A lot line adjustment could also result in the reconfiguration of property boundaries to create a parcel entirely covered by wetlands or environmentally sensitive habitat such that the resulting parcel could not be developed consistent with the wetland or ESHA protection policies of the Coastal Act or a certified LCP. Without authority to review lot line adjustments under the coastal development permit requirements of the Coastal Act, the Commission or a local government would be unable to prevent such a result and could be forced to approve development in a wetland or ESHA to avoid a regulatory taking of private property.

For these reasons, the Commission finds that the review for conformity with policies of the County's LCP and the Coastal Act afforded by the coastal development permit process is a matter of statewide significance.

2.5 Conclusion

The Commission finds that Section 30603(a)(4) confers the Commission with appellate jurisdiction over any "development" that is not listed as the principal permitted use in the County's certified Local Coastal Program. Because the purported lot line adjustment constitutes "development" under 30106 of the Coastal Act and because lot line adjustments are not listed as the principal permitted use in the County's Certified Local Coastal Program, the purported lot line is development appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

Section 6328.16 of the County's certified Local Coastal Program specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." In conformity with Sections 13569, 13570, 13571 and 13572 of the Commission's regulations and Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program, until the County issues a corrected Final Local Action Notice indicating that: (1) the subject lot line adjustment is development requiring a coastal development permit; (2) the County's action approving the lot line adjustment is appealable to the Coastal Commission; and (3) providing the procedures for appeal of the local decision to the Commission, the lot line adjustment is not legally authorized.



PROJECT FILE

August 11, 2003

Kenneth and Patricia Bruce
1516 Norton Street
San Mateo, CA 94404

Dear Mr. And Mrs. Bruce:

SUBJECT: Coastal Development Permit and Design Review for a Domestic Well, Single-Family Dwelling, and Lot Line Adjustment, 13th Street, Montara; APN 037-014-190
County File No. PLN 2001-00638

ENVIRONMENTAL SERVICES AGENCY

Staff has reviewed your application for a Coastal Development Permit and Design Review to allow the drilling of up to three test wells with the intent of establishing one domestic well and a new single-family dwelling located on APN 037-014-190; and a Lot Line Adjustment for APNs 037-014-170, 037-014-180 and 037-014-190. The project is located in the R-1/S-17/DR Zoning District. This Coastal Development Permit approval pertains only to the project plans received by this office on October 29, 2002. All neighbors within 300 feet of the subject property were notified.

The required pre-decision public notice of this project was given and the 10-day public comment period expired on December 16, 2002. A concern was received regarding the height of the single-family dwelling. The concern has since been resolved. This project is not appealable to the California Coastal Commission.

The Lot Line Adjustment between parcels 037-014-180 and 037-014-190 required the Lot Merger of parcels 037-014-170 and 037-014-180. The merger of these two parcels was recorded on March 17, 2003. A new assessor's parcel number for the merged parcels has not yet been assigned.

A biologist report and archeology report were both submitted for verification of any findings of rose linanthus (*Linanthus rosaceus*) and archeological deposits. Results of both reports confirmed no findings.

Midcoast Community Council

The application was reviewed by the Midcoast Community Council on October 2, 2002. The Council had concerns regarding the proposed 29-1/2-foot height. Staff confirmed, per Section 6300.2.6. of the R-/S-17 Zoning District Regulations, that the Design Review Committee has the discretion to increase the maximum building height up to 33 feet. The Council did not respond with further concerns.

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

EXHIBIT NO. 1
APPLICATION NO. 2-03-02-EDD
BRUCE
(Page 1 of 6 pages)

PLANNING AND BUILDING

455 County Center, 2nd Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX

The application was reviewed by the Coastside Design Review Committee on November 14, 2002. The Committee approved the higher height per section 6300.2.6 and recommended approval with the following conditions. These conditions have been included as conditions of approval listed in this decision and shall be reflected on the applicant's building plans.

1. Tree protection mitigations shall be prepared by a certified arborist.
2. The applicant's building permit plans shall show all corner trimmings to be 2"x 6" size.
3. The front stonework shall continue all around the building, up to the first floor's finish floor line.

Your application for the above-referenced Coastal Development is hereby approved subject to the conditions listed below, which are to be cleared through the departments indicated.

FINDINGS

Staff found that:

A. For the Environmental Review:

1. The residential element of this project is categorically exempt under the provisions of Section 15303, Class 3, (New Construction of Small Structures) and the Lot Line Adjustment is exempt under the provisions of Section 15305, Class 5, (Minor Alterations in Land Use Limitations).

B. For the Coastal Development Permit:

2. 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.
3. The project conforms to specific findings required by policies of the San Mateo County Local Coastal Program.
4. The number of building permits for construction of single-family residences other than for affordable housing issued in the calendar year does not exceed the limitations of LCP Policies 1.22 and 1.23 as stated in Section 6328.15.
5. That the project conforms to specific findings required by policies of the San Mateo County Local Coastal Program regarding the placement of structures and the drilling of domestic wells in the urban unincorporated area.

C. For the Lot Line Adjustment:

6. The adjusted parcels meet the criteria set forth in section 7126.1 of the County Subdivision Regulations.

D. For the Design Review:

7. This project has been reviewed under and found to be in compliance with the Design Review Standards for the Coastside Districts, Section 6565.17 of the San Mateo County Zoning Regulations.

CONDITIONS OF APPROVAL**Planning Division**

1. This approval applies only to the proposal and house plans as described in this report and materials dated October 29, 2002. Minor adjustments to the project may be approved by the Planning Director if they are consistent with the intent of and in substantial conformance with this approval.
2. This Coastal Development Permit shall be valid for one year from the date of approval. Any extension of this permit shall require submittal of a written request and payment of the applicable extension fees thirty (30) days prior to expiration.
3. This Coastal Development Permit approval allows the drilling of up to three wells with the intent of establishing one domestic well. Any additional well drilling shall be subject to a separate Coastal Development Permit.
4. The placement of the domestic well shall be at least 50 feet from any sanitary sewer line, 50 feet from a septic tank, 75 feet from a drainage field, and 5 feet from a property line. The well shall be shown on the site plan as submitted with the building permit application plans.
5. Prior to issuance of the building permit, the applicant must record the lot line adjustment, in accordance with the requirements of the Department of Public Works (see Conditions 15 and 16, below).
6. The applicant shall apply for and be issued a building permit prior to the start of construction.
7. Prior to the issuance of a building permit, the applicant shall submit to the Planning Division for review and approval, erosion control and stormwater control plans which show how the transport and discharge of pollutants from the project site will be minimized. The goal is to prevent sediment and other pollutants from entering local drainage systems and water bodies, and protect all exposed earth surfaces from erosive forces. Said plan shall include the placement of barrier fencing, sediment rolls and erosion control blankets to protect the intermittent drainage feature from sheet erosion of denuded surfaces and siltation. Said fencing, sediment rolls, and erosion control blankets shall remain in place until after the final inspection approval is issued by the Building Inspection Section. All building rainwater runoff shall be captured by gutters and downspouts and rainwater from all paved areas directed to the identified on-site drainage facilities.

In addition, said plan shall adhere to the San Mateo County Wide Storm Water Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:

- a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15.

- b. Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
- c. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
- d. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff.

The approved erosion control and stormwater control plans shall be implemented prior to the issuance of a building permit. The consulting civil engineer shall confirm that erosion control measures are in place and shall monitor them in the event of a storm.

8. The applicant's submitted permanent stormwater management drainage plan shall be revised to ensure that no water runoff discharges into any nearby creek channel or drainage channel. The plan shall be submitted to the Planning Division for review and approval by the Planning Director prior to issuance of the building permit. The approved plan shall be included as part of the project's final building permit application and construction plans. The County Building Inspection Section and Department of Public Works shall ensure that the approved plan is implemented prior to the project's final building inspection approval. The required drainage plan shall show the necessary mechanisms to contain all water runoff generated by on-site impervious surfaces and shall include facilities to minimize the amount and pollutants of stormwater runoff through on-site percolation and, if necessary, filtering facilities to control stormwater runoff from the project site once the project is completed. In addition, the plan shall indicate that:
 - a. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers, herbicides and pesticides, which can contribute to runoff pollution.
9. The applicant shall submit a plan for employment of Best Management Practices (BMPs) to control sediment and erosion during the construction process and in the long term. Said plan shall include all applicable practices located in the San Mateo County Stormwater Pollution Prevention Program (STOPPP) brochures for earth moving activities, roadwork and paving, heavy equipment operation, landscaping, and fresh concrete or mortar application. Said plan shall be submitted to the Planning Director for review and approval, prior to the issuance of a building permit.
10. The applicant shall ensure that if during construction or grading, any evidence of archaeological traces (human remains, artifacts, concentration of shale, bone, rock, ash) are uncovered, then all construction of grading within a 30-foot radius shall be halted, the Planning Division shall be notified, and the applicant shall hire qualified archaeologist to assess the situation and recommend appropriate measures. Upon review of the archaeologist's report, the Planning Director, in consultation with the applicant and the archaeologist, will determine the steps to be taken before construction or grading may continue.
11. No tree cutting is allowed by this permit. Removal of any tree over 12 inches in diameter shall require a separate tree removal permit.
12. The applicant is required to monitor the noise level at the sites so that the proposed construction activity will not exceed 80-dBA level at any one moment. All construction

activity is limited to the construction hours of the County including 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday. Construction is prohibited on Sunday and any national holiday.

13. The property owner shall apply for and obtain service from California-American Water Company or the local water service provider when adequate water supplies become available.
14. The use of the water source shall not impair surface streamflow, the water supply of other property owners or any sensitive habitats.

Department of Public Works

15. The applicant shall submit to the Project Planner, for recordation, legal descriptions of the reconfigured parcels. The Project Planner will review and approve the descriptions and forward them to Public Works for their concurrence.
16. The applicant shall submit to the Project Planner, a copy of the unrecorded Grant Deed (of only the parcel to be exchanged) for review and approval prior to transfer of ownership via recordation of the deed.
17. Prior to the issuance of the Building Permit, the applicant will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed residence per Ordinance #3277.
18. The provision of San Mateo County Grading Ordinance shall govern all grading on and adjacent to this site.
19. The applicant shall submit a driveway "Plan and Profile," to the Public Works Department, showing the driveway access to the parcel (garage slab) complying with County Standards for driveway slopes (not to exceed 20%) and to County Standards for driveways (at the property line) being the same elevation as the center of the access roadway. The driveway plan shall also include and show specific provisions and details for handling both the existing and the proposed drainage.
20. The applicant shall prepare a plan indicating the proposed method of sewerage for this property. This plan should be included on the improvement plans.
21. The applicant shall submit a detailed plan showing the source for all his underground utility installations. This plan shall show the required trenching from the source to the new residence and shall be included on the Building Permit plans and application.
22. No construction work within the County right-of-way shall begin until Public Works' requirements for the issuance of an encroachment permit, including review of applicable plans, have been met and an encroachment permit issued by the Department of Public Works.

Design Review

23. Tree protection mitigations shall be prepared by a certified arborist.
24. The applicant's building permit plans shall show all corner trimmings to be 2" x 6" size.

25. The front stonework shall continue all around the building, up to the first floor's finish floor line.

Environmental Health Division


26. Prior to the building permit stage, the applicant shall construct a domestic well with the required permit and meet the minimum quality and quantity standards.
27. The applicant shall submit the required Health Review fee of \$89.00 to be paid at the Environmental Health processing stage and prior to issuance of the b Permit.

Montara Sanitary District

28. In the event connection fees for water system are instituted, the applicant should be required to pay such fees and connect to the public water system. The applicant shall be required to obtain a Sewer Connection Permit prior to the issuance of a building permit and sign an agreement that they will connect to the public water system when available. Care must be taken to insure compliance with County Health regulations regarding sufficient separation between sewer lines and domestic wells and insure no conflict with current or future mains.

Any interested party aggrieved by the determination of the Director of Environmental Services may appeal this decision to the Planning Commission within ten (10) calendar days from the date of determination, by completing an application and paying an appeal fee of \$330. The appeal period of this project will end at 7 p.m. on **Wednesday, August 27, 2003**. This item is not appealable to the California Coastal Commission. Further information may be obtained by calling Olivia Sun, Project Planner, at 650/363-1852.

Sincerely,

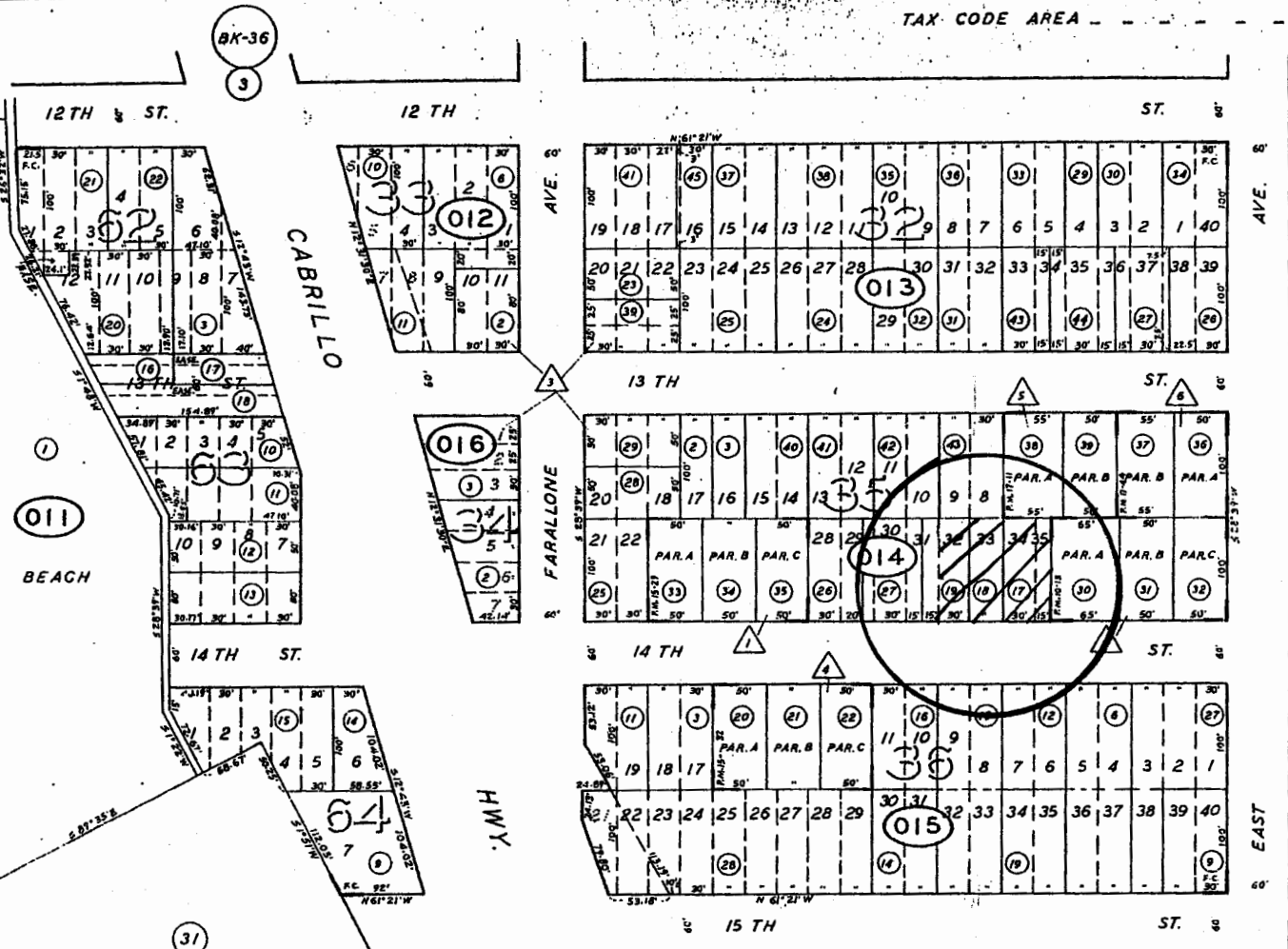


Terry Burnes
Planning Administrator

TB/OS:cdn - OCSN1072_WCN.DOC

cc: Pete Bentley, Department of Public Works
Stan Low, Environmental Health
Bill Cameron, Building Inspection Section
Gareth Harris, Fire Marshal, Half Moon Bay Fire
Chuck Kozak, Midcoast Community Council
George Irving, Montara Sanitary District
Chuck Little, California-American Water Company

PACIFIC OCEAN BEACH



TAX CODE AREA

37-1



BK-36
31

EXHIBIT NO. 2
APPLICATION NO. 2-03-02-EDD
BRUCE

- △ PARCEL MAP VOL. 17/11
- △ PARCEL MAP VOL. 17/44

- △ PARCEL MAP VOL. 15/29
- △ PARCEL MAP VOL. 10/13
- △ FARALLONE CITY RESUB. RSM 6/2
- △ PARCEL MAP VOL. 15/32

ASSESSOR'S MAP COUNTY OF SAN MATEO CA.

San Mateo County Environmental Services Agency

Planning and Building Division ■ 455 County Center ■ Redwood City
California 94063 ■ Planning: 650/363-4161 ■ Building: 650/599-7311 ■ Fax: 650/363-4849

August 28, 2003

2-SMC-03-143

NOTICE OF FINAL LOCAL DECISION
Pursuant to Section 6328.11.1(f) of the San Mateo County Zoning Regulations

RECEIVED

SEP 02 2003

CALIFORNIA
COASTAL COMMISSION

California Regional Coastal Commission
North Central Coastal District
45 Fremont Street, Suite 2000
San Francisco, CA 94105

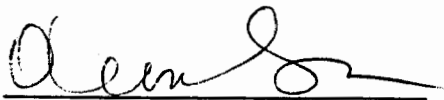
County File No. : PLN2001-00638

Applicant Name: JAVIER CHAVARRIA
Owner Name: KENNETH BRUCE

The above listed Coastal Development Permit was conditionally approved by the County of San Mateo on **August 11, 2003**. The County appeal period ended on **August 27, 2003**. Local review is now complete.

This permit **IS NOT** appealable to the California Coastal Commission.

If you have any questions about this project, please contact OLIVIA SUN at (650) 363-4161.



OLIVIA SUN
Project Planner

EXHIBIT NO.	3
APPLICATION NO.	2-03-02-EDD
	BRUCE

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



EXHIBIT NO. 4
APPLICATION NO. 2-03-02-EDD
BRUCE
(Page 1 of 2 pages)

September 4, 2003.

Olivia Sun
 San Mateo County
 Planning and Building Division
 455 County Center
 Mail Drop PLN122
 Redwood City, CA 94063

**SUBJECT Deficient Final Local Action Notice PLN2001-00638 (Bruce)
 CDP for Single-Family Residence, three Test Wells, one Domestic Well, and
 Lot Line Adjustment**

Dear Ms. Sun:

On September 2, 2003, Commission staff received the County's Final Local Action Notice, dated August 28, 2003 concerning the above-referenced coastal development permit. The Notice does not comply with Section 13571, *Final Local Government Action—Notice*, of the Commission Regulations or the corresponding provisions of Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program. The Notice is deficient in that it neither notices the approved lot line adjustment as development requiring a coastal development permit that is appealable to the Coastal Commission nor provides the procedures for appeal of the local decision to the Commission as required by Section 13571(a) of the Coastal Commission regulations and Section 6328.11.1 and 6328.16 of the County's certified Local Coastal Program.

In two separate actions, occurring on October 10, 2002 and August 6, 2003, the California Coastal Commission affirmed the determination by the Commission's Executive Director that all lot line adjustments in the Coastal Zone require a coastal development permit except where exempt pursuant to an approved categorical exclusion order, and that any coastal development permit approved for a lot line adjustment in San Mateo County is appealable to the Coastal Commission because lot line adjustments are not identified as the principal permitted use in any zoning districts within the Coastal Development overlay zone in the County, including the R-1 zone.

We note that subsequent to certification of the County's LCP, a court of appeal held in its published decision *La Fe v Los Angeles County* (1999) 73 Cal. App. 4th 231 that lot line adjustments are development as defined in Coastal Act Section 30106 both because lot line adjustments constitute a division of land and because lot line adjustments result in a change in the density or intensity of use of land. We also note that Section 6328.16 of the County's certified Local Coastal Program specifies that actions by the County "may be appealed to the Coastal Commission in accordance with Coastal Commission regulations." In conformity with

Sections 13569, 13570 and 13571 of the Commission regulations and Sections 6328.11.1 and 6328.16 of the County's certified Local Coastal Program, the County should accordingly issue a corrected Final Local Action Notice indicating that the subject lot line adjustment is development requiring a coastal development permit, that the County's action approving the lot line adjustment is appealable to the Coastal Commission, and providing the procedures for appeal of the local decision to the Commission. Pursuant to Section 13572 of the Commission regulations and Section 6328.16 of the County's certified Local Coastal Program, PLN2001-00638 will remain suspended and will not become effective until a corrected notice has been issued and the appeal period to the Commission has run.

Section 13569 of the Commission regulations provides for Commission review of local government determinations of permit appealability. If the County disagrees with the Executive Director's determination that the project comes within the Commission's appellate jurisdiction pursuant to Section 30603, a Commission hearing will be scheduled in accordance with Section 13569(d) to resolve the disagreement.

Sincerely,



Chris Kern
Coastal Program Manager
North Central Coast District

cc: Marcia Raines
Terry Burns
Kenneth Bruce
Javier Chavarria

EXHIBIT NO. 5
APPLICATION NO. 2-03-02-EDD
BRUCE
(Page 1 of 4 pages)

**CHAPTER 20B. "CD" DISTRICT
(COASTAL DEVELOPMENT DISTRICT)**

SECTION 6328. ESTABLISHMENT AND PURPOSE OF COASTAL DEVELOPMENT DISTRICT. There is hereby established a Coastal Development ("CD") District for the purpose of implementing the Coastal Act of 1976 (Division 20 of the Public Resources Code) in accordance with the Local Coastal Program of the County of San Mateo.

SECTION 6328.1. REGULATIONS FOR "CD" DISTRICT. The regulations of this Chapter shall apply in the "CD" District. The "CD" District is an "overlay" district which may be combined with any of the districts specified in Chapters 5 through 20A of this Part, or other districts which may from time to time be added by amendment to this Part. The regulations of this Chapter shall apply in addition to the regulations of any district with which the "CD" District is combined.

SECTION 6328.2. LOCATION OF "CD" DISTRICT. The "CD" District is and shall be coterminous with that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.

SECTION 6328.3. DEFINITIONS. For the purpose of this Chapter, certain terms used herein are defined as follows:

- (a) "Aggrieved person" means any person who, in person or through a representative, appeared at a public hearing or by other appropriate means prior to action on a Coastal Development Permit informed the County of his concerns about an application for such permit, or who for good cause was unable to do either, and who objects to the action taken on such permit and wishes to appeal such action to a higher authority.
- (b) "Applicant" means the person, partnership, corporation or State or local government agency applying for a Coastal Development Permit.
- (c) "Approving authority" means the County officer, commission or board approving a Coastal Development Permit.
- (d) "Coastal Commission" means the California Coastal Commission.
- (e) "Coastal Development Permit" means a letter or certificate issued by the County of San Mateo in accordance with the provisions of this Chapter, approving a project in the "CD" District as being in conformance with the Local Coastal Program. A Coastal Development Permit includes all applicable materials, plans and conditions on which the approval is based.

- (f) "Coastal Policy Checklist" means a form prepared and completed by the Planning Director as a guide for reviewing a Coastal Development Permit application for conformance with the Local Coastal Program. It shall list appropriate application information, all Local Coastal Program policies, those policies with which the application does not comply and recommended conditions, if any, which could be imposed to bring the application into compliance.
- (g) "Coastal Zone" means that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.
- (h) "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land including lots splits, except where the division of land is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan, submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

- (i) "Emergency" means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.
- (j) "Historic structure" means, in accordance with Health and Safety Code Section 18955, any structure, collection of structures, and their associated sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or State governmental jurisdiction. This shall include structures on existing or future national, State, or local historical registers or official inventories, such as the National Register of Historical Places, State Historical Landmarks, State Points of Historical Interest, and city or County registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks.

- (k) "Local Coastal Program" means the County's land use plans, zoning ordinances, zoning maps and implementing actions certified by the Coastal Commission as meeting the requirements of the California Coastal Act of 1976.
- (l) "Major energy facility" means any energy facility as defined by Public Resources Code Section 30107 and exceeding \$25,000 in estimated cost of construction.
- (m) "Major public works project" means any public works project as defined by California Administrative Code Section 13012 and exceeding \$25,000 in estimated cost of construction.
- (n) "Other permits and approvals" means permits and approvals, other than a Coastal Development Permit, required by the San Mateo County Ordinance Code before a development may proceed.
- (o) "Overlay district" means a set of zoning requirements, described in the ordinance text and mapped, which is imposed in addition to the requirements of one or more underlying districts. Development in such districts must comply with the requirements of both the overlay district and the underlying district(s). The "CD" District is an overlay district.
- (p) "Permittee" means the person, partnership, corporation or agency issued a Coastal Development Permit.
- (q) "Principal permitted use" means any use representative of the basic zone district allowed without a use permit in that underlying district.
- (r) "Project" means any development (as defined in Section 6328.3(h)) as well as any other permits or approvals required before a development may proceed. Project includes any amendment to this Part, any amendment to the County General Plan, and any land division requiring County approval.
- (s) "Project appealable to the Coastal Commission" if approved by the Board of Supervisors means:
 - (1) Projects between the sea and the first through 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, whichever is the greater distance.
 - (2) Projects in County jurisdiction located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.
 - (3) Any project involving development which is not a principal permitted use in the underlying zone, as defined in Section 6328.3(p).

- (t) "Project appealable to the Coastal Commission" if approved, conditioned, or denied by the Board of Supervisors means any project involving development which constitutes a major public works project or a major energy facility (as defined in Section 6328.3).
- (u) "Scenic Road Corridor" means any scenic road corridor as defined and mapped in the Visual Resources Component of the Local Coastal Program.
- (v) "Underlying district" means any district with which the "CD" District is combined.
- (w) "Working day" means any day on which County offices are open for business.

SECTION 6328.4. REQUIREMENT FOR COASTAL DEVELOPMENT PERMIT.

Except as provided by Section 6328.5, any person, partnership, corporation or state or local government agency wishing to undertake any project, as defined in Section 6328.3(r), in the "CD" District, shall obtain a Coastal Development Permit in accordance with the provisions of this Chapter, in addition to any other permit required by law. Development undertaken pursuant to a Coastal Development Permit shall conform to the plans, specifications, terms and conditions approved or imposed in granting the permit.

SECTION 6328.5. EXEMPTIONS. The projects listed below shall be exempt from the requirement for a Coastal Development Permit. Requirements for any other permit are unaffected by this section.

- (a) The maintenance, alteration, or addition to existing single-family dwellings; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:
 - (1) Improvements to a single-family structure on a beach, wetland or seaward of the mean high tide line.
 - (2) Any significant alteration of landforms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 50 feet of the edge of a coastal bluff.
 - (3) The expansion or construction of water wells or septic systems.
 - (4) On property 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 of the sea where there is no beach, whichever is the greater distance, or in scenic road corridors, an improvement that would result in an increase of 10% or more of internal floor area of an existing structure, the construction of an additional story (including lofts) in an existing structure,

12. Non-Conforming Structure. Any legal building or structure that does not conform with the development standards required by the zoning regulations currently in effect including, but not limited to, density (number of dwelling units per parcel area), setback, height, floor area, daylight plane, and lot coverage requirements.
13. Non-Conforming Use. Any legal land use that does not conform with the uses permitted by the zoning regulations currently in effect. A non-conforming use includes the area devoted to the use, the structure(s) housing the use, and all use related activities.
14. Non-Conforming Situation. Any zoning nonconformity that is not a non-conforming parcel, non-conforming use or non-conforming structure. Examples include non-conforming parking, landscaping, or signs.
15. Principal Use. The primary or predominant use of any parcel.
16. Residential Use. One-family dwellings, two-family dwellings, multiple-family dwellings, second dwelling units, and residential accessory uses, buildings or structures.
17. Unimproved Parcel. Any parcel that is not developed with a building or structure to serve the principal use of the parcel, e.g., a parcel in a residential district not developed with a dwelling unit.
18. Zoning Nonconformity. Any legal parcel, use, building, structure, or other situation that does not conform with the zoning regulations currently in effect.
19. Zoning or Building Code Regulations Currently in Effect. Those regulations in effect at the time when final approval is given to an entitlement under this Chapter. Final approval does not occur until all administrative appeals are exhausted.

SECTION 6133. NON-CONFORMING PARCELS.

1. Continuation of Non-Conforming Parcels. A non-conforming parcel may continue as a separate legal parcel, subject to the merger provisions of the County Subdivision Regulations, and compliance with all other provisions of this Chapter.
2. Enlargement of Non-Conforming Parcels. A non-conforming parcel may be enlarged through the addition of contiguous land by lot line adjustment, lot consolidation, merger, or resubdivision, provided that the enlargement does not create nonconformities on adjoining property.

EXHIBIT NO. 6
APPLICATION NO. 2-03-02-EDD
BRUCE
(Page 1 of 3 pages)

3. Development of Non-Conforming Parcels

a. Development Not Requiring Use Permit

- (1) Unimproved Non-Conforming Parcel. Development of an unimproved non-conforming parcel may occur without the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d) below) exist:

<u>Required Minimum Parcel Size</u>	<u>Actual Non-Conforming Parcel Size</u>
(a) 5,000 sq. ft. (area)	≥3,500 sq. ft. (area)
(b) 50 ft. (width)	≥35 ft. (width)
(c) >5,000 sq. ft. (area)	≥5,000 sq. ft. (area)
(d) ≥50 ft. (width)	≥50 ft. (width)

Proposed development on the unimproved non-conforming parcel shall conform with the zoning and building code regulations currently in effect.

- (2) Improved Non-Conforming Parcel. Development of an improved non-conforming parcel may occur without requiring the issuance of a use permit provided that the proposed development conforms with the zoning and building code regulations currently in effect.

b. Development Requiring a Use Permit

(1) Unimproved Non-Conforming Parcel

- (a) Development of an unimproved non-conforming parcel shall require the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d)) exist:

<u>Required Minimum Parcel Size</u>	<u>Actual Non-Conforming Parcel Size</u>
(a) 5,000 sq. ft. (area)	<3,500 sq. ft. (area)
(b) 50 ft. (width)	<35 ft. (width)
(c) >5,000 sq. ft. (area)	<5,000 sq. ft. (area)
(d) ≥50 ft. (width)	<50 ft. (width)

- (b) Proposed development on any unimproved non-conforming parcel that does not conform with the zoning regulations in effect shall require the issuance of a use permit
- (2) Improved Non-Conforming Parcel. Proposed development on an improved non-conforming parcel, that does not conform with the zoning regulations currently in effect, shall require the issuance of a use permit.
- (3) Use Permit Findings. As required by Section 6503, a use permit for development of a non-conforming parcel may only be issued upon making the following findings:
 - (a) The proposed development is proportioned to the size of the parcel on which it is being built,
 - (b) All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible,
 - (c) The proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible,
 - (d) The establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood, and
 - (e) Use permit approval does not constitute a granting of special privileges.

SECTION 6134. NON-CONFORMING USES.

1. Continuation of Non-Conforming Uses. A non-conforming use may continue provided all other provisions of this Chapter are met.

The Board of Supervisors, upon recommendation by the Planning Commission at a public hearing, can require that any non-conforming use (except residential) be removed or converted to a permitted use within a prescribed period of time, as allowed by law, and upon findings that (1) the non-conforming use is detrimental to the health, safety or public welfare of the surrounding area, and (2) it degrades the neighborhood character.

CHAPTER 6. "R-1" DISTRICTS
(ONE-FAMILY RESIDENTIAL DISTRICT)

SECTION 6160. REGULATIONS FOR "R-1" DISTRICTS. The following regulations shall apply in all "R-1" districts and shall be subject to the provisions of Chapter 22 of this Part.

SECTION 6161. USES PERMITTED.

- (a) One-family dwellings.
- (b) Public parks and public playgrounds.
- (c) Crop and tree farming and truck gardening.
- (d) Home occupations.
- (e) Accessory buildings and accessory uses appurtenant to a residential use, provided, however, that such accessory buildings shall not be constructed until the main building shall have been constructed.
- (f)
 - (1) Keeping of pets in association with a one-family dwelling.
 - (2) Limited keeping of pets in association with a second unit.
- (g)
 - (1) Animal Fanciers in association with a one-family dwelling, subject to an animal fanciers' permit issued in accordance with County Ordinance Code, Division III, Part Two, Chapter 6.3.
 - (2) Catteries in association with a one-family dwelling, subject to a kennel/cattery permit issued in accordance with County Ordinance Code, Division III, Part Two, Chapter 12.
- (h) Reverse vending machines at public facilities.
- (i) Small collection facilities for recyclable materials at public facilities, subject to obtaining a building permit, provided that there is no additional mechanical processing equipment on site, that collection facilities shall not be located within 50 feet of a residence, nor decrease traffic or pedestrian circulation or the required number of on-site parking spaces for the primary use, and all litter and loose debris shall be removed on a daily basis.

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APPLICATION NO. 2-03-02-EDD
BRUCE
(Page 1 of 4 pages)

- (j) Large Residential Day Care Facilities for Children (Family Day Care Homes; 7-12 children), subject to a large family day care permit issued in accordance with the County Zoning Regulations, Chapter 22, Section 6401.2.
- (k) The following uses subject to securing a use permit in each case:
 1. Churches, schools, libraries and fire stations.
 2. Golf courses with standard length fairways and country clubs.
 3. Non-commercial clubs.
 4. Nurseries and greenhouses used only for the propagating and cultivating of plants, provided that no retail sales shall be allowed. The granting of such use permits shall generally be confined to those areas of the County in which the nurseries and greenhouses are already established, and use permits granted to applicants presently operating such greenhouses and nurseries shall normally cover the proposed future development of all property owned or controlled by the applicant.
 5. A second residential unit on a parcel at least 7,000 sq. ft. in size in the Coastal Zone.

SECTION 6162. SECOND DWELLING UNITS. See Chapter 22.5 for provisions to allow second dwelling units to locate in the R-1 Zoning Districts.

- (Section 6161(f) - Amended by Ordinance No. 3423 - November 10, 1992)
- (Section 6161(g) - Amended by Ordinance No. 3423 - November 10, 1992)
- (Section 6161 (h) - Amended by Ordinance No. 1427 - September 27, 1960)
- (Section 6161 (h)(5) - Added by Ordinance No. 2705 - December 16, 1980)
- (Section 6161(h) - Amended/Added by Ordinance No. 3131 - December 15, 1987)
- (Section 6161(i) - Amended/Added by Ordinance No. 3131 - December 15, 1987)
- (Section 6161(h), (i), and (j) - Amended/Added by Ordinance No. 3157 - September 13, 1988)
- (Section 6161(j) - Amended by Ordinance No. 3791 - October 21, 1997)
- (Section 6161(j) - Added by Ordinance No. 3791 - October 21, 1997)
- (Sections 6162, 6163, 6164 - Repealed by Ordinance No. 1483 - October 10, 1961)
- (Section 6162 - Added by Ordinance No. 2877 - January 24, 1984)
- (Section 6162 - Amended by Ordinance No. 3057 - March 4, 1986)

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CHAPTER 20. "S-17" DISTRICT **(COMBINING DISTRICT)**

SECTION 6300.2. REGULATIONS FOR "S-17" COMBINING DISTRICT. The following regulations shall apply in any single-family residential district with which the "S-17" District is combined.

1. Minimum Building Site
 - a. Minimum lot width: 50 feet.
 - b. Minimum lot area: 5,000 sq. ft.
2. Minimum Lot Area Per Dwelling Unit

Minimum lot area per dwelling unit: 5,000 sq. ft.
3. Minimum Yards Required
 - a. Front yard: 20 feet.
 - b. Side yards:
 - (1) For structures 16 feet in height or less: 5 feet each side.
 - (2) For structures over 16 feet in height: combined total of 15 feet with a minimum of 5 feet on any side.
 - c. Rear yard: 20 feet.
 - d. In any area where the "S-17" District is combined with the "DR" District, the minimum side yard setback may be reduced to provide for creative design concepts such as "zero" side yard setbacks provided that: (1) the Design Review Administrator approves, (2) the application involves joint development of two or more adjacent lots, (3) the total side yard requirement is met and (4) a minimum side yard of 5 feet is maintained adjacent to any lot not included with the application.
4. Maximum Height Permitted
 - a. Structural height at the highest point of the roof shall not exceed 28 feet.

b. In any areas where the "S-17" District is combined with the "DR" District, the following exceptions to the maximum height limit may be allowed subject to the approval of the Design Review Administrator:

(1) Lots With Downhill Slopes. Where the average slope of a lot is greater than a (1) foot fall in seven (7) feet distance from the established street grade at the front lot line and where a sewer connection must be made uphill from the building location, the maximum height allowed may be increased to 36 feet, and

(2) Alternative Energy. Solar panels and chimneys may extend beyond the height limit as required for safety or efficient operation.

5. Maximum Coverage Permitted

a. For structures 16 feet in height or less: 50%.

b. For structures greater than 16 feet in height: 35%.

6. Noise Insulation and Avigation Easement

For new dwellings on those properties in Moss Beach, north of Half Moon Bay Airport, identified on County Zoning Maps 37-18 and 37-24, the following shall apply:

a. Submit an acoustical analysis, prepared by a qualified acoustical consultant, demonstrating that new construction has been designed to comply with the following standards:

(1) Interior community noise equivalent levels (CNEL) with windows closed, attributable to exterior sources shall not exceed an annual CNEL of 45 dBA in any habitable room.

(2) Design maximum noise levels (single event) shall not exceed 50 dBA in bedrooms and 55 dBA in other habitable rooms.

b. Construct residence in accordance with recommendation of acoustical analysis.

c. Grant to the County an avigation easement which (1) provides for aircraft use of airspace above grantor's property, and (2) protects the County from liability associated with aircraft operations.

(Section 6300.2 - Amended by Ordinance No. 3595 - September 20, 1994)