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OPINION	:	No. 81-406
of	:	JULY 3, 1981
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THE HONORABLE JOHN A. DRUMMOND, COUNTY COUNSEL, MENDOCINO COUNTY, has requested an opinion on a question we have restated as follows:

Under what circumstances do contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act?

CONCLUSION

Contiguous parcels held by the same owner "merge" for purposes of the Subdivision Map Act if (1) a local ordinance has been adopted pursuant to Government Code section 66424.2 and the parcels come within the minimum size and development criteria specified in the statute, (2) the "reversion to acreage" provisions of Government Code section 66499.20-½ are followed, or (3) the general requirements of Government

Code sections 66426–66428 for subdividing (resubdividing) property are satisfied under Government Code section 66499.20-¾.

ANALYSIS

The Subdivision Map Act (Gov. Code §§ 66410–66499.37;[1] hereafter "Act") requires, with certain exceptions, that a subdivider of property (1) design the subdivision in conformity with applicable general and specific plans, (2) construct public purpose improvements such as streets and sewers, and (3) donate land or money for public uses such as parks and schools. (See §§ 66439, 66474–66478; Longtin, Cal. Land Use Regulations (1977) § 10.03, pp. 562–563; 3 Witkin, Summary of Cal. Law (2d ed. 1973) Real Property, §§ 22–24, pp. 1788–1792; 2 Ogden's Revised Cal. Real Property Law (1975) §§ 25.1–25.2, pp. 1204–1206; Comment, *Land Development and the Environment: The Subdivision Map Act* (1974) 5 Pacific L.J. 55, 86–87.)

While the Act establishes general statewide criteria for land development planning, it delegates to local agencies the authority to regulate the details of proposed subdivisions. (§§ 66411, 66420, 66473–66479; *Simac Design, Inc.* v. *Alciati* (1979) 92 Cal. App. 3d 146, 157.)[2]

The requirements of the Act and local ordinances enacted thereunder are enforced by criminal sanctions in connection with a procedure involving the filing of required subdivision maps. In general terms, the filing of a tentative map and a final map is mandatory for divisions into five parcels or more, while the filing of a parcel map is required for divisions into four or fewer parcels. (See §§ 66426, 66428; 4 Miller & Start, Current Law of Cal. Real Estate (1977) §§ 24:33–24:35, pp. 60–68; 9 Hagman & Volpert, Cal, Real Estate Law Practice (1977) §§ 290.20–290.24, pp. 290:12–290:35.) A subdivider must obtain local government approval of the appropriate map before the subdivided parcels may be offered for sale, lease or be financed. (§§ 66499.30, 66499.31; *Bright* v. *Board of Supervisors* (1977) 66 Cal. App. 3d 191, 193–194; Comment, *Review of Selected 1974 California Legislation* (1975) 6 Pacific L.J. 125, 357–360.)

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[1] All section references hereafter are to the Government Code unless otherwise specified.

[2] We note that a "local agency" under the Act is a city, city and county, or county. (§ 66420.) The Act applies to charter cities and counties, and any local ordinance in conflict with the Act's provisions is void under the California Constitution. (*Santa Clara County Contractors Etc. Assn.* v. *City of Santa Clara* (1965) 232 Cal. App. 2d 564, 575–578; see also *The Pines* v. *City of Santa Monica* (1980) 108 Cal. App. 3d 577, 579–582; *Hirsch* v. *City of Mountain View* (1976) 64 Cal. App. 3d 425, 430; *Codding Enterprises* v. *City of Merced* (1974) 42 Cal. App. 3d 375, 378; *Newport Bldg. Corp.* v. City of Santa Ana (1962) 210 Cal. App. 2d 771, 774–776.)

The question presented for analysis concerns the conditions for the "merger" of parcels under the provisions of the Act. In its simplest form, the issue may be illustrated as follows: (1) X purchases parcel A in 1950; (2) X buys parcel B, contiguous to parcel A, in 1960; (3) X now wishes to sell parcel A. Does X need to obtain approval of a parcel map[3] and comply with the various other provisions of the Act when he offers parcel A for sale?

The starting reference for our discussion is section 66424. The triggering event for application of the Act's requirements is a "division" of land. Section 66424 defines a "subdivision" as "the division, by any subdivider, or any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. . . ."

In our example, parcels A and B would be "units of . . . land . . . shown on the latest equalized county assessment roll . . . as contiguous units," for which a "division" would be required if only one parcel were to be sold. Section 66424.2, however, provides an exception to the Act's requirements under specified conditions. it states:

> "(a) Notwithstanding Section 66424, two or more contiguous parcels or units of land which have been created under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto or were not subject to such provisions at the time of their creation shall not be deemed merged by virtue of the fact that such contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units, or any of them; except that, a local agency may, by ordinance, provide that if any one of such contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency and at least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the local agency, or which was built prior to the time such permits were required by the local agency, then such parcels shall be merged for the purposes of this division.

[3] Section 66420 allows a local agency to waive the requirement for a parcel map under certain conditions.

"(b) Any parcels which merged by operation of law and which have not been deemed merged pursuant to a local ordinance adopted pursuant to subdivision (a), are hereby deemed to be unmerged without compliance with the requirements of this division.

"(c) Whenever a local agency has knowledge that real property has merged pursuant to this section or a local ordinance enacted pursuant to this section, it shall cause to be filed for record with the recorder of the county in which the real property is located, a notice of such merger specifying the names of the record owners and particularly describing the real property, provided that, at least 30 days prior to the recording of the notice the owner of the parcels or units to be affected by the merger, shall be advised in writing of the intention to record the notice and specifying a time, date and place at which the owner may present evidence to the legislative body or advisory agency as to why such notice should not be recorded."

Section 66424.2 deals mainly with the circumstances under which contiguous parcels do *not* merge. We will examine the general provisions first, with the merger exception language analyzed thereafter.

Preliminarily, we must determine what constitutes a "parcel" for purposes of section 66424.2. The parcels mentioned in the statute are those that "have been created under the provisions of [the Subdivision Map Act] or any prior law regulating the division of land or a local ordinance enacted pursuant thereto or were not subject to such provisions at the time of their creation."

We note that California began "regulating" the division of land in 1907. The original statutory scheme (Stat. 1907, ch. 231) required little more, however, than that an accurate map be filed. Actual "regulation" began in 1929 (Stats. 1929. ch. 837). with the prohibition against conveying parcels not approved by local agencies coming in 1937. (Stats. 1937, ch. 670.) The 1943 recodification (Stats. 1943, ch. 128.) remained in effect until 1974 (Stats. 1974, ch. 1536), when the Act was placed in its present location in the Government Code. (See Longtin, *supra*, pp. 561–562.)

A "parcel" under section 66424.2 may thus include a homestead patent of 160 acres acquired in 1890[4] or a lot legally subdivided in 1915, as well as those parcels

[4] Obviously. subdivisions created prior to 1907 "were not subject to" provisions regulating the division of land "at the time of their creation." We emphasize here, however, that only legally created subdivisions are within the scope of this opinion. Attempts to create units of land illegally or for purposes unrelated to the Act's provisions cannot be considered "divisions" under section 66424. (See 62 Ops. Cal. Atty. Gen.

created pursuant to the regulating provisions of the Act or its statutory predecessors or which were statutorily exempt from such provisions at the time of creation.

It would make no difference whether the parcels (1) were purchased at the same time or different times, (2) were purchased from the same owner or different owners, (3) were acquired under one deed or separate deeds, (4) were formerly held by separate deeds but transferred in a single deed, (5) have been transferred once or ten times, (6) involve 2 or 5000 contiguous lots, or (7) were subsequently passed to an heir in a probate proceeding—as long as they were "created under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto or were not subject to such provisions at time of their creation." Ordinarily, the local agency would determine the manner of creation on a case-by-case basis.

Subdivision (b) of section 66424.2 "supports" the above described provisions of subdivision (a) and clarifies a recent change in the statute. When section 66424.2 was originally enacted, it merged certain parcels by its express terms. Effective January 1, 1977, section 66424.2 was added to the Act as follows:

> ". . . two or more contiguous parcels or units of land which have been subdivided under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease or financing of such contiguous parcels or units, or any of them; except that, *if any one of such contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency and at least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the local agency, then such parcels shall be merged for the purpose of this division* [unless a local ordinance specifically exempts such parcels from merger in such circumstances] . . . ." (Stats. 1976, ch. 928, § 4; italics added.)

Accordingly, between January 1, 1977 and July 7, 1977, when section 66424.2 was amended (Stats. 1977, ch. 234, § 5), parcels that were contiguous and held by the same owner were merged "by operation of law" if one of the parcels did not conform to locally established standards for minimum parcel size and one of the parcels was not

147, 149 (1979).)

improved, as long as no local ordinance exempted the parcels from merger. (See 62 Ops. Cal. Atty. Gen. 281, 284 (1970).)

The automatic merger provision of the original enactment was not only modified by the 1977 amendment but is now totally reversed in the current form of the statute. (Stats. 1980, ch. 1217, § 3.) Subdivision (b) acts to clarify this change of legislative intent, besides supporting the nonmerger provisions of subdivision (a), by expressly "unmerging" those parcels that were merged by the original enactment of the statute.[5]

Having set forth the "nonmerger" provisions of section 66424.2, we next turn to its merger provisions. The statute authorizes local agencies to merge by ordinance certain parcels held by the same owner. The parcels must be contiguous, one of which must not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency," and one of which must not be "developed with a building for which a permit has been issued by the local agency, or which was built prior to the time such permits were required by the local agency" If these conditions are met, section 66424.2 expressly authorizes merger by local ordinance.

Although section 66424.2 is the chief statute dealing with the merger of parcels for purposes of the Act, we note that parcels may be merged under the Act's provisions concerning reversions to acreage. (§§ 66499.11–66499.20-½.) Under these statutory provisions, a public hearing is held (§§ 66499.15), specific findings are made by the local agency (§ 66499.16), and a final or parcel map is filed. (§§ 66499.18, 66499.20-½.) Section 66499.20-½ states in part: "The filing of the map shall also constitute a merger of the separate parcels into one parcel."

Additionally, the Act specifies that parcels may be merged (and resubdivided) by satisfying the requirements of the Act concerning subdivisions in general. Section 66499.20-¾ states:

> "Subdivided lands may be merged and resubdivided without reverting to acreage by complying with the applicable requirements for the subdivision of land as provided by this division and any local ordinances adopted pursuant thereto. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel, and the real property shall thereafter be shown with the new lot or parcel boundaries on the assessment roll. Any unused fees or deposits previously made pursuant to this division pertaining to the property shall be

[5] We know of no other merger law to which subdivision (b) could apply.

> credited prorata towards any requirements for the same purposes which are applicable at the time of resubdivision. Any streets or easements to be left in effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all streets and easements not shown on the map."

Returning to our original illustration in summarizing these provisions, we conclude that parcel A and parcel B merge for purposes of the Act if (1) a local ordinance is enacted pursuant to section 66424.2 and the parcels come within the minimum size and development criteria of the statute, (2) the "reversion to acreage" provisions of section 66499.20-½ are followed, or (3) the general requirements of sections 66426–66428 for subdividing (resubdividing) property are met under the provisions of section 66499.20-¾.

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