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OPINION	:	No. 86-101
	:	
of	:	<u>AUGUST 29, 1986</u>
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THE HONORABLE H. PETER KLEIN, COUNTY COUNSEL,  
MENDOCINO COUNTY, has requested an opinion on the following question:

May a county with a valid merger ordinance in existence prior to January 1, 1984, continue to treat "resource lands" as merged thereunder where the county has not given notice of the merger to the landowner or recorded a notice of the merger?

CONCLUSION

A county with a valid merger ordinance in existence prior to January 1, 1984, may continue until January 1, 1988, to treat "resource lands" as merged thereunder where the county has not given notice of the merger to the landowner or recorded a notice of the merger; thereafter, only substandard size parcels may continue to be treated as merged under the terms of Government Code section 66451.301.

## ANALYSIS

The Subdivision Map Act (Gov. Code, §§ 66410- 66499.37; "Act")<sup>1</sup> establishes general statewide criteria for land development. It grants authority to cities and counties to determine the compatibility of the design of a subdivision in relation to the surrounding area. Under the Act's provisions a subdivider may be required to construct public improvements such as streets and sewers and donate land or money for public uses such as parks and schools. The statutory purposes include the prevention of fraud and exploitation of the general public and individual purchasers. The requirements of the Act and local ordinances adopted thereunder are enforced through a system of filing for approval the appropriate maps of the subdivision with the city or county. (See generally *John Taft Corp. v. Advisory Agency* (1984) 161 Cal.App.3d 749, 755; *Soderling v. City of Santa Monica* (1983) 142 Cal.App.3d 501, 506; *Benny v. City of Alameda* (1980) 105 Cal.App.3d 1006, 1111; *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 157-158.)

The question presented for analysis concerns the "merger" and "unmerger" of "resource lands"<sup>2</sup> pursuant to a county ordinance adopted under the Act's provisions. We are asked whether a county with a valid<sup>3</sup> merger ordinance in existence prior to January 1, 1984, may continue to treat resource lands as merged thereunder where the county has not given notice of the merger to the landowner or recorded a notice of the merger.

The starting point in examining the Act's provisions is section 66424. It defines a "subdivision" as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, . . . for the purpose of sale, lease, or financing, whether immediate or future. . . ." Accordingly, any attempted sale of a portion of property by a landowner will normally trigger the Act's requirements under the general language of section 66424.

Section 66451.10 provides an exception to the terms of section 66424 by specifying when contiguous parcels held by the same owner may be sold, leased, or financed without further complying with the Act's requirements. In order to qualify for their separate and independent existence, the parcels must "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 which were not subject to such provisions at the

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<sup>1</sup> All references hereafter to the Government Code are by section number only.

<sup>2</sup> "Resource lands" are defined for our purposes with some particularity in subdivision (b) of section 66451.30 and in section 66451.302; both statutes are quoted in the Appendix along with other relevant statutes.

<sup>3</sup> In these circumstances a "valid" merger ordinance would be one that complied with statutory law at the time of its adoption.

time of their creation." Section 66451.10 thus allows, for example, the owner of adjoining lots in an older approved subdivision to sell the lots to others without getting local government approval.

Section 66451.10, however, provides its own exception. Parcels that would otherwise be considered separate pursuant to section 66451.10 may be "merged" by a city or county if certain conditions for merger are met as specified in sections 66451.11 through 66451.21. Consequently an owner of adjoining lots in an older approved subdivision may be brought back under the provisions of section 66424 and be required to file a subdivision map in order to sell the lots individually, but only if the stringent requirements of sections 66451.11 through 66451.21 are followed by the local government.

The authority of a city or county to merge parcels pursuant to sections 66451.10 through 66451.21 became effective on January 1, 1984. (§ 66451.10.) Prior to that date the Legislature allowed local governments to merge parcels under a different set of circumstances, and the Legislature itself merged certain parcels by operation of law. (See 64 Ops.Cal.Atty.Gen. 549, 553 (1981); 62 Ops.Cal.Atty.Gen. 281, 284 (1979).)<sup>4</sup> These older merged parcels are now subject to being "unmerged" by application of recently enacted sections 66451.19 and 66451.25 through 66451.33. In such case, then, the owner of adjoining lots in an older approved subdivision may be able to sell the lots without filing a subdivision map even though the lots were once merged, if they were subsequently unmerged.

The question to be resolved concerns the final situation where parcels have merged and are now subject to unmerger by statute. Subdivision (a) of section 66451.19 provides:

"Except as provided in Article 1.7 (commencing with section 66451.30), a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless such notice of merger has been recorded prior to January 1, 1986."

Under the facts presented, parcels were merged prior to January 1, 1984, but no notice was given to the landowner or a notice of merger filed prior to January 1, 1986. Section 66451.19 unmerges such parcels "[e]xcept as provided in Article 1.7 (commencing with section 66451.30)."

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<sup>4</sup> Due process does not require notice or hearing with respect to the adoption of a state statute or local merger ordinance or the nondiscretionary application of each's objective standards to a particular parcel. (See *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612-616.)

Section 66451.301, part of article 1.7, allows "resource lands" to remain merged under certain conditions even though notice to the landowner and recordation of the notice of merger did not occur prior to January 1, 1986. It states:

"If any parcels or units of land merged under a valid local merger ordinance which was in effect prior to January 1, 1984, *but for which a notice of merger had not been recorded before January 1, 1988*, and one or more of the merged parcels or units of land is ["resource lands"], the parcels or units of land shall be deemed not to have merged unless all of the following conditions exist:

"(a) The parcels or units are contiguous and held by the same owner.

"(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

"(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

"(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

"If all the conditions described in subdivisions (a), (b), (c) and (d) above exist, only a parcel or unit of land which does not conform to minimum parcel size shall remain merged with a contiguous parcel." (Emphasis added.)

Section 66451.302 requires the city or county to send notices to landowners of property subject to section 66451.301, advising them of the provisions of the new law.

In interpreting these various statutes, we may rely upon several well-established principles of statutory construction. The fundamental rule to be followed is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) In ascertaining legislative intent, we turn first to the language used (*Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764), giving the words their ordinary and usual meanings (*People v. Belleci* (1979) 24

Cal.3d 879, 884). "Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) "Whenever reasonable, interpretations which produce internal harmony, avoid redundancy, and accord significance to every word and phrase are preferred." (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114.) Statutes "are generally presumed to operate prospectively and not retroactively" (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587), and "exceptions to a general provision of a statute are strictly construed" (*Estate of Banerjee* (1978) 21 Cal.3d 527, 540). "Debates surrounding the enactment of a bill may illuminate its interpretation" (*In re Marriage of Bouquet, supra*, 16 Cal.3d 583, 590), while "the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose" (*California Mfrs. Assn. v. Public Utilities Com., supra*, 24 Cal.3d 836, 844).

Section 66451.19 provides that parcels which were merged by a local ordinance before 1984 are unmerged if a notice of merger for such parcels was not recorded before 1986. While not a model of clarity, section 66451.301 makes an exception to this recordation timetable with respect to resource lands. Under the latter statute, parcels "shall be deemed not to have merged" if (1) they were merged under a valid local ordinance before 1984, (2) notice of merger for such parcels was not recorded before 1988, (3) one or more of the parcels is "resource lands," and (4) not all of conditions (a), (b), (c), and (d) of the statute exist. (If all the conditions of requirement (4) do exist, undersized parcels remain merged with contiguous parcels even though the local government has failed to record a notice of merger.)

The effect of section 66451.301 is to extend the time for recording the notice of merger for resource lands from "before January 1, 1986" as provided in section 66451.19 to "before January 1, 1988." If a notice of merger is recorded for resource lands before 1988, requirement (2) of section 66451.301 is not satisfied; consequently, no unmerger of parcels occurs under the statute. On the other hand, if the local government fails to record the notice before 1988, unmerger occurs except as to substandard size parcels where all the conditions (a) through (d) are present. This interpretation of section 66451.301 accords with the Legislature's statement of the general effect of section 66451.301 set forth in section 66451.302 (eighth paragraph). This interpretation also accords with the legislative history.

Sections 66451.301 and 66451.302 were enacted in 1985. (Stats. 1985, ch. 796, §§ 5, 6.) Their purpose was explained during hearings of the Senate Housing and Urban Affairs Committee by the author of the legislation:

"Last session I carried two bills which rewrote the law on merging and unmerging property. After those bills became law, we learned that some rural counties were having difficulty implementing them.

"The current merger law specifies that if by January 1, 1986, cities and counties haven't notified the owners of merged parcels that those lots have been merged, the property will automatically unmerge. We now know that this would be disastrous for some counties which merged hundreds of parcels in a blanket action without notifying individual property owners or recording the mergers. The property which is of particular concern is used for timber production or grazing. This land could probably not continue in this use economically if it is broken into small pieces.

"The problem which we are trying to fix with AB 643 is serious in Mendocino County. In that county, many parcels devoted to grazing and timber consist of pieces of land designated on old federal patents. Some property owners have insisted that these old parcels are legitimate and that they ought to be able to sell them without filing a tentative or final map.

"The County believes that these parcels have merged under their local ordinance and ought to stay merged. The only way to keep them from unmerging next January, however, is to do a complex title search going back to the 1800's on each piece of property in the resource areas. The County simply does not have the staff or money to complete this task by January and has asked for relief in this bill.

"AB 643 would not get the County totally off the hook. It *would* give them a grace period for notifying owners of merged parcels and would make the notification process simpler. If the County still can't get all the necessary documents recorded by January of 1988, some parcels will unmerge, but only down to minimum lot size according to the general plan and zoning.

"This solution has resulted from countless hours of negotiations between county representatives and the people who wrote the merger legislation last session. We realize that it is far from perfect, but I think all parties involved agree that it is a workable compromise."

The Legislature has demonstrated a strong interest in preserving an official record of the merger and unmerger of parcels for purposes of the Act. (See §§ 66451.12, 66451.30, 66451.32, 66499.20 3/4.) Nevertheless, it does not appear that a notice of

merger need be recorded with respect to substandard size parcels where the other conditions of section 66451.301 are met.

Cities and counties are not without a remedy should parcels unmerge by virtue of section 66451.19 or by a failure to comply with section 66451.301. They may subject the unmerged parcels to the current statutory scheme for mergers, sections 66451.10 through 66451.21. (See § 66451.19, subs. (d) & (e).)

In answer to the question presented, therefore, we conclude that a county with a valid merger ordinance in existence prior to January 1, 1984, may continue until January 1, 1988, to treat resource lands as merged thereunder where the county has not given notice of the merger to the landowner or recorded a notice of the merger; thereafter, only substandard size parcels may continue to be treated as merged under the terms of section 66451.301.

## APPENDIX

### Section 66451.10:

"Notwithstanding Section 66424, except as is otherwise provided for in this article, 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 which 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.

"This article shall provide the sole and exclusive authority for the merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article."

### Section 66451.19:

"(a) Except as provided in Article 1.7 (commencing with section 66451.30), a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless such notice of merger has been recorded prior to January 1, 1986.

"(b) Notwithstanding the provisions of Sections 66451.12 to 66451.18, inclusive, a city or county having a merger ordinance in existence on January 1, 1984, may, until July 1, 1984, continue to effect the merger of parcels pursuant to that ordinance, unless the parcels would be deemed not to have merged pursuant to the criteria specified in Section 66451.30. The local agency shall record a notice of merger for any parcels merged pursuant to that ordinance.

"(c) At least 30 days prior to recording a notice of merger pursuant to subdivision (a) or (b), the local agency shall advise the owner of the affected parcels, in writing, of the intention to record the notice and specify 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.

"(d) The failure of a local agency to comply with the requirements of this article for the merger of contiguous parcels or units of land held in common ownership shall render void and ineffective any resulting merger or recorded notice of merger and no

further proceedings 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, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article.

"(e) The failure of a local agency to comply with the requirements of any prior law establishing requirements for the merger of contiguous parcels or units of land held in common ownership, shall render voidable any resulting merger or recorded notice of merger. From and after the date the local agency determines that its actions did not comply with the prior law, or a court enters a judgment declaring that the actions of the agency did not comply with the prior law, no further proceedings 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, until such time as the parcels or units of land have been lawfully merged by subsequent proceedings initiated by the local agency which meet the requirements of this article."

Section 66451.30:

"Any parcels or units of land for which a notice of merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

"(a) The parcel meets each of the following criteria:

"(1) Comprises at least 5,000 square feet in area.

"(2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

"(3) Meets current standards for sewage disposal and domestic water supply.

"(4) Meets slope density standards.

"(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

"(6) Development of the parcel would create no health or safety hazards.

"(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

"(b) And, with respect to such parcel, none of the following conditions exist:

"(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

"(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

"(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

"(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

"(5) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (A) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (B) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

"For purposes of paragraphs (3) and (4), 'mineral resource extraction' means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

"Each city or county, as applicable, may establish the standards specified in paragraphs (3) to (7), inclusive, of subdivision (a), which shall be applicable to parcels deemed not to have merged pursuant to this section."

Section 66451.301 (quoted in full in the text).

Section 66451.302:

"(a) By January 1, 1987, a city or county or city and county which has within its boundaries, parcels or units of land which are or may be subject to the provisions of Section 66451.301, shall send a notice to all owners of real property affected by Section 66451.301 in substantially the following form:

"The city or county sending you this notice has identified one or more parcels of land which you own as potentially subject to a new state law regarding the merger of substandard parcels which are located in one or more of the following categories:

"(1) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

"(2) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, is in a timberland production zone as defined in subdivision (g) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

"(3) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

"(4) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

"(5) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal

development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.'

"The new state law contained in Section 66451.301 of the Government Code, generally provides for parcels or units of land located in one or more of the above-described areas which were merged prior to January 1, 1984, and for which the local agency did not record a notice of merger by January 1, 1988, the parcels are deemed unmerged on January 1, 1988, unless all of the following conditions exist:

"(a) The parcels or units are contiguous and held by the same owner.

"(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

"(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure of necessary structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

"(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

"In order to determine whether this new law applies to your property, you should immediately contact the \_\_\_\_\_ Department of (City or County) to assist you in determining the application of the new law.'

"WARNING. Your failure to act may result in the loss of valuable legal rights regarding the property."