

# *City of Brisbane*

## *Agenda Report*

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Ordinance No. 574 to Amend Brisbane Municipal Code Title 16,  
Regarding Lot Merger Procedures

DATE: November 5, 2012

### **City Council Goals:**

To provide for effective and efficient delivery of City services (Goal #1).  
To preserve and enhance livability and diversity of neighborhoods (Goal #14).

### **Purpose:**

To update the Subdivision Ordinance's lot merger procedures to be consistent with State law.

### **Recommendation:**

That the City Council introduce Ordinance No. 574.

### **Background:**

2007-2014 Housing Element Program H.I.1.e calls for updating the merger ordinance (BMC Sections 16.12.060-16.12.080). The intent of this program is to encourage the provision of new infill housing opportunities by reducing government constraints upon substandard lots that predate the City's minimum lot size standards.

The City's substandard lot provisions assume that adjoining substandard lots that are in common ownership will be merged together to create standard building sites. For the City to initiate such mergers, the City's merger provisions must comply with the State Subdivision Map Act (Government Code Sections 66451.10-66451.33, attached). The City's merger provisions, adopted in 1982, allowed lots to be merged without a recorded Notice of Merger, which is no longer permitted per Government Code Section 66451.10. To initiate lot mergers on its own, the City must adopt a new ordinance in compliance with Government Code Section 66451.11. The required notice of this public hearing was published and posted as required by Government Code Section 66451.20.

The Planning Commission reviewed the proposed ordinance at its March 8, 2012 meeting, as part of its recommendation of approval of Zoning Text Amendment RZ-8-11, regarding substandard lots and other matters, which will come to the City Council at a subsequent public hearing.

**Discussion:**

Section 16.12.060 of the proposed ordinance would allow the City Council to merge adjoining lots under the same ownership, if any one of the lots does not comply with the applicable zoning district's minimum lot area, if at least one of the lots is undeveloped or only partially developed with a portion of a primary structure or is only developed with an accessory structure, and if at least one of the lots is less than 5,000 sq. ft. in area or was not created in compliance with applicable laws at the time or does not meet any of the standards provided in Government Code Section 66451.11. The notification, hearing and recordation procedures for merger would be as provided in Government Code Sections 66451.13-66451.18.

Section 16.12.070 would be amended to codify past standard practice of allowing the voluntary merger of lots by property owners via recordation of a Declaration of Lot Merger, consistent with Government Code Section 66499.20<sup>3/4</sup>. This alternative has proven useful when an application is submitted for development that would straddle a lot line running between lots owned together, eliminating the interior lot line from which required setbacks could technically be required per BMC Section 17.02.715.

Section 16.12.080 would be deleted, since its purpose would be incorporated into Section 16.12.060.

**Fiscal Impact:**

None.

**Measure of Success:**

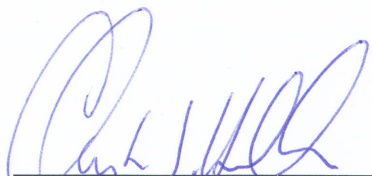
Improving the Municipal Code by eliminating conflicts with state law.

**Attachments:**

Redline Version of Draft Merger Ordinance  
Draft Ordinance No. 574  
Government Code Excerpts



John Swiecki, Community Development Director



Clay Holstine, City Manager



“REDLINE” VERSION OF MUNICIPAL CODE AMENDMENTS

Proposed changes in the current Municipal Code are indicated ~~by striking through~~ the existing language to be deleted and putting the new language *in italics*.

Title 16

SUBDIVISIONS

Chapter 16.12 – TENTATIVE AND FINAL PARCEL MAPS AND SUBDIVISION MAPS—WHERE REQUIRED

Sections:

- 16.12.010 – Tentative and final subdivision map—When required.
- 16.12.020 – Tentative and final subdivision map—Exceptions to requirements.
- 16.12.030 – Tentative and final parcel map—When required.
- 16.12.040 – Tentative and final parcel map—Exceptions to requirements.
- 16.12.050 – Final parcel map—Waiver of requirements.
- 16.12.060 – ~~Merger of parcels—General nonmerger rule.~~ *Merger of parcels initiated by the City.*
- 16.12.070 – ~~Merger of parcels—Exception to nonmerger rule.~~ *Merger of parcels initiated by the property owner.*
- 16.12.080 – ~~Merger of parcels—Notice.~~

...

*16.12.060 - Merger of parcels initiated by the City. A. The City Council may merge contiguous parcels held by the same owner as of the date that notice of intention to determine status is recorded, if any one of the parcels does not conform to the applicable zoning ordinance standard for minimum lot area and if all of the following requirements are satisfied:*

- 1. 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.*
- 2. With respect to any affected parcel, one or more of the following conditions exists:*
  - a. Comprises less than 5,000 square feet in area at the time of the determination of merger.*
  - b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.*
  - c. Does not meet current standards for sewage disposal and domestic water supply.*

- d. Does not meet any adopted slope stability standards.
- e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability per applicable codes.
- f. Its development would create health or safety hazards in violation of applicable codes.
- g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

B. To initiate merger, the City Council shall adopt a notice of intention to determine status of the affected parcels. The notice shall be mailed by certified mail to the then current record owner of the property, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity within 30 days after recording of the notice to file with the City Clerk a request for a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the county recorder on the date that notice is mailed to the property owner.

C. Upon receiving a request for a hearing on determination of status from the owner of the affected property, the City Clerk shall fix a time, date, and place for a hearing to be conducted by the City Council, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the City Clerk's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the City Council and the property owner. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance. At the conclusion of the hearing, the City Council shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. A determination of nonmerger may be made whether or not the affected property meets the standards for merger. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded within 30 days after conclusion of the hearing.

D. If, within 30 days of filing the notice of intention, the owner does not file a request for a hearing, the City Council may make a determination that the affected parcels are to be merged or are not to be merged. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded no later than 90 days following the mailing of notice of intention.

E. If the City Council determines that the subject property shall not be merged, it shall cause to be recorded a release of the notice of intention to determine status and shall mail a clearance letter to the then current owner of record. **Merger of parcels-General nonmerger rule.**—Except as provided in Section 16.12.070, and notwithstanding the provisions of Sections 16.08.190 through 16.08.220, two (2) or more contiguous parcels or units of land which 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 shall not merge by virtue of the fact that such contiguous parcels or units are held



by the same owner, and no further proceeding shall be required for the purpose of sale, lease or financing of such contiguous parcels or units, or any of them.

**16.12.070 - Merger of parcels initiated by the property owner.** *Contiguous parcels held by the same owner may be merged by recordation of a Declaration of Lot Merger signed by the property owner and acknowledged by the planning director.*

~~**Merger of parcels-Exception to nonmerger rule.** Two (2) or more contiguous parcels or units held by the same owner shall be deemed to have merged if:~~

~~———A.———Any one of them does not conform to the minimum lot size or width requirements of the zoning ordinance for the district within which such parcels or units are located;~~

~~———B.———At least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the city, or which was built prior to the time such permits were required by the city.~~

~~**16.12.080—Merger of parcels-Notice.**———Whenever the planning director has knowledge that real property has merged pursuant to this title, he shall cause to be filed for record with the county recorder a notice of such merger. The notice shall specify the names of the record owners and shall particularly describe the real property. At least thirty (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 planning commission why such notice should not be recorded.~~

draft  
**ORDINANCE NO. 574**

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING  
CHAPTER 16.12, TENTATIVE AND FINAL PARCEL MAPS AND  
SUBDIVISION MAPS—WHERE REQUIRED, OF THE  
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS  
AS FOLLOWS:**

**SECTION 1:** Section 16.12.060 in Chapter 16.12 of the Municipal Code is amended to read as follows:

**16.12.060 - Merger of parcels initiated by the City.** A. The City Council may merge contiguous parcels held by the same owner as of the date that notice of intention to determine status is recorded, if any one of the parcels does not conform to the applicable zoning ordinance standard for minimum lot area and if all of the following requirements are satisfied:

1. 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.

2. With respect to any affected parcel, one or more of the following conditions exists:

a. Comprises less than 5,000 square feet in area at the time of the determination of merger.

b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

c. Does not meet current standards for sewage disposal and domestic water supply.

d. Does not meet any adopted slope stability standards.

e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability per applicable codes.

f. Its development would create health or safety hazards in violation of applicable codes.

g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

B. To initiate merger, the City Council shall adopt a notice of intention to determine status of the affected parcels. The notice shall be mailed by certified mail to the then current record owner of the property, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity within 30 days after recording of the notice to file with the City Clerk a request for a hearing on determination of status and to present



evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the county recorder on the date that notice is mailed to the property owner.

C. Upon receiving a request for a hearing on determination of status from the owner of the affected property, the City Clerk shall fix a time, date, and place for a hearing to be conducted by the City Council, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the City Clerk's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the City Council and the property owner. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance. At the conclusion of the hearing, the City Council shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. A determination of nonmerger may be made whether or not the affected property meets the standards for merger. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded within 30 days after conclusion of the hearing.

D. If, within 30 days of filing the notice of intention, the owner does not file a request for a hearing, the City Council may make a determination that the affected parcels are to be merged or are not to be merged. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded no later than 90 days following the mailing of notice of intention.

E. If the City Council determines that the subject property shall not be merged, it shall cause to be recorded a release of the notice of intention to determine status and shall mail a clearance letter to the then current owner of record.

**SECTION 2:** Section 16.12.070 in Chapter 16.12 of the Municipal Code is amended to read as follows:

**16.12.070 - Merger of parcels initiated by the property owner.** Contiguous parcels held by the same owner may be merged by recordation of a Declaration of Lot Merger signed by the property owner and acknowledged by the planning director.

**SECTION 3:** Section 16.12.080 in Chapter 16.12 of the Municipal Code is repealed in its entirety.

**SECTION 4:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**SECTION 5:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \*

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



GOVERNMENT CODE SECTIONS 66451.10-66451.33  
[excluding Sections 66451.195, 66451.22-23 & 66451.302 (a)(5)],  
66499.20¾ & 6060-6061

66451.10. (a) 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 those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the 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 the contiguous parcels or units, or any of them.

(b) This article shall provide the sole and exclusive authority for local agency initiated 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. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:

- (1) Lot line adjustments.
- (2) Amendment or correction of a final or parcel map.
- (3) Reversions to acreage.
- (4) Exclusions.
- (5) Tentative, parcel, or final maps which create fewer parcels.

66451.11. A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) 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.

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (6) Its development would create health or safety hazards.
- (7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:



(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

66451.12. A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

66451.13. Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.



66451.14. At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

66451.15. Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section 66451.14, the local agency shall fix a time, date, and place for a hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

66451.16. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance.

At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

66451.17. If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.13.

66451.18. If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

66451.19. (a) Except as provided in Sections 66451.195, 66451.301, and 66451.302, 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 a 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 the 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 those 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.

66451.20. Prior to amending a merger ordinance which was in existence on January 1, 1984, in order to bring it into compliance with Section 66451.11, the legislative body of the local agency shall adopt a resolution of intention and the clerk of the legislative body shall cause notice of the adoption of the resolution to be published in the manner prescribed by Section 6061. The publication shall have been completed not less than 30 days prior to adoption of the amended ordinance.

66451.21. Prior to the adoption of a merger ordinance in conformance with Section 66451.11, by a city or county not having a merger ordinance on January 1, 1984, the legislative body shall adopt a resolution of intention to adopt a merger ordinance and fix a time and place for a public hearing on the proposed ordinance, which shall be conducted not less than 30 nor more than 60 days after adoption of the resolution. The clerk of the legislative body shall cause a notice of the hearing to be published in the manner prescribed by Section 6061. Publication shall have been completed at least seven days prior to the date of the hearing. The notice shall:

- (a) Contain the text of the resolution.
- (b) State the time and place of the hearing.
- (c) State that at the hearing all interested persons will be heard.

66451.24. (a) Nothing in this article prohibits a landowner, local agency, or renewable energy corporation authorized to conduct business in this state from seeking financial assistance from eligible state funding sources to defray either of the following costs:

(1) The costs of merging parcels, including, but not limited to, escrow costs, on private or public lands pursuant to this article.

(2) The costs of establishing or administering a joint powers authority established or authorized to merge parcels on private or public lands, including, but not limited to, all eligible costs, for the purpose of siting renewable energy facilities.

(b) This section does not authorize the use of state funds for the acquisition of real property for which a parcel merger will be initiated.



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.

66451.301. 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 within one of the categories specified in paragraphs (1) to (5), inclusive, of



subdivision (b) of Section 66451.30, 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.

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.

66451.31. Upon application made by the owner and payment of any fees authorized by Section 66451.33, the local agency shall make a determination that the affected parcels have merged or, if meeting the criteria of Section 66451.30, are deemed not to have merged.

66451.32. (a) Upon a determination that the parcels meet the standards specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder a notice of the status of the parcels which shall identify each parcel and declare that the parcels are unmerged pursuant to this article.

(b) Upon a determination that the parcels have merged and do not meet the criteria specified in Section 66451.30, the local agency shall issue to the owner and record with the county recorder, a notice of merger as provided in Section 66451.12.



66451.33. A city or county may impose a fee not to exceed those permitted by Chapter 13 (commencing with Section 54990) of Part 1, payable by the owner, for those costs incurred with respect to a parcel for which application for a determination that the parcels meet the criteria of Section 66451.30 is made.

66499.20¾. A city or county may, by ordinance, authorize the merger of contiguous parcels under common ownership without reverting to acreage. Such ordinance shall require the recordation of an instrument evidencing the merger.

6060. Whenever any law provides that publication of notice shall be made pursuant to a designated section of this article, such notice shall be published in a newspaper of general circulation for the period prescribed, the number of times, and in the manner provided in that section. As used in this article, "notice" includes official advertising, resolutions, orders, or other matter of any nature whatsoever that are required by law to be published in a newspaper of general circulation.

6061. Publication of notice pursuant to this section shall be for one time.