City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 3/8/12

FROM: Tim Tune, Special Assistant, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-8-11** to Amend Brisbane Municipal Code Title 17; Chapters 17.08, R-2 District, and 17.10, R-3 District, to Reclassify Dwelling Groups as Permitted Uses; and Chapter 17.32, General Regulations, to Revise the Limitations on Substandard Lots and Add Provisions for Modification in Conjunction with Application for Tentative Map, Lot Line Adjustment and Elimination of Interior Lot Lines; also Amend Brisbane Municipal Code Title 16, Subdivisions, Chapter 16.32, Lot Line Adjustments; City of Brisbane, applicant.

REQUEST: Amendments to Brisbane Municipal Code Chapter 17.32, General Use Regulations, are proposed to implement Housing Element Programs H.I.1.d & H.I.1.e, so as to provide consistency with the Subdivision Ordinance's modification process and lot merger procedures (to be updated separately per State law), as well as to clarify the Zoning Ordinance's substandard lot provisions.

In addition, dwelling groups are recommended to be changed from conditional uses to permitted uses in the R-2 and R-3 Districts per Housing Element Program H.D.1.b.

The draft ordinance would also amend the Subdivision Ordinance to update the lot line adjustment procedures consistent with State law.

RECOMMENDATION: Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-8-11.

ENVIRONMENTAL DETERMINATION: A Negative Declaration was adopted by the City Council January 18, 2011, for the 2007-2014 Housing Element, including Programs H.I.1.d, H.I.1.e and H.D.1.b which the proposed ordinance would implement. For additional minor zoning amendments regarding lot line adjustments, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act (CEQA). This general rule is contained in State CEQA Guidelines Section 15061(b)(3).

STAFF ANALYSIS: The 2007-2014 Housing Element adopted last year contains the following programs regarding parcels that do not meet the Zoning Ordinance lot standards:

> *Program H.I.1.d Amend the Zoning Ordinance to provide a permit process parallel to the modification permitted in the Subdivision Ordinance (Brisbane Municipal Code*
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> *Section 16.36.040) to allow property to be split into sites that meet the minimum lot area standard even if they do not meet the minimum lot dimension standards.*
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> *Program H.I.1.e Clarify the "substandard lot" provisions of the Zoning Ordinance, and update the merger ordinance.*

In addition, the Housing Element includes a program for allowing multiple-family dwellings to be developed as detached buildings without Use Permit approval in specified districts:

> *Program H.D.1.b Amend the R-2 and R-3 Districts regulations to allow dwelling groups (as defined by Brisbane Municipal Code Section 17.02.240) as a permitted use (instead of a conditional use). Also allow dwelling groups in the R-SWB District.*

The intent of these programs is to encourage the provision of new housing, especially infill, by reducing government constraints, while ensuring that new residential development is compatible with existing development and the diversity of the community.

Modifications to Lot Width/Depth Standards. The Subdivision Ordinance (BMC Section 16.16.220.C) requires that the Planning Commission find that: "Each lot or parcel to be created will constitute a buildable site and will be capable of being developed in accordance with the applicable provisions of the zoning ordinance." Presumably, a "buildable site" is one which complies with the applicable minimum standard lot area and dimensions for the zoning district within which it is located (there is no definition of the term in the Subdivision Ordinance, see BMC Chapter 16.08; cf. BMC Sections 17.02.490 & 17.02.725). BMC Section 16.36.010 states:

> Whenever real property located in any subdivision is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations set forth in this title, the planning commission may permit such modification thereof as may be reasonably necessary if such modifications conform with the spirit and purpose of this title.

Thus, the Commission may approve a modification to the requirement for a buildable site in the Subdivision Ordinance ("this title" referring to BMC Title 16, Subdivisions), but there is no parallel process in the Zoning Ordinance (Title 17). Instead, to grant a Variance to the Zoning

Ordinance's regulations, the Planning Commission must find that because of the size, shape or other special circumstances of the property, "strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification" (BMC Section 17.46.010.B). This more onerous standard is inconsistent with the Subdivision Ordinance, which is why Housing Element Program H.I.1.d calls for a new permit process in the Zoning Ordinance to parallel to the "modification" permitted in the Subdivision Ordinance. An estimated 12 sites in the R-1 District would benefit from allowing property to be split into sites that meet the minimum 5,000 sq. ft. lot area standard even if they do not meet the minimum 50 ft. width or 100 ft. depth lot dimension standards.

Along these lines, staff recommends that a provision be included to allow approval of Lot Line Adjustments that will not "increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of..." the Zoning Ordinance (to borrow a phrase from BMC Section 17.38.080.A), even if the resulting situation does not fully comply with the development regulations of the applicable zoning district. Staff also recommends that the Lot Line Adjustments chapter of the Subdivision Ordinance (BMC Chapter 16.32) be updated so as to be consistent with State law [California Government Code Section 66412(d), attached] and the City's standard practice (see attached Redline Version of Municipal Code Amendments).

Substandard Lots. The City's "substandard lot" provisions (BMC Sections 17.02.490.H and 17.32.100) basically state that a substandard lot ["...a lot having any lot dimensions (including lot area per BMC Section 17.02.500) that do not comply with the minimum standards..."] in any residential district can be independently developed only with a single-family dwelling, regardless of which residential district it is in, only if it was not owned by the owner of an adjoining property any time on or after October 27, 1969 ("...the time of the adoption of the ordinance codified in this title or prior ordinance"). Lots which do not comply with the minimum standards for lot area or dimensions and which do not qualify as substandard lots require Variance approval in order to be developed. A number of such Variances have been granted (see attached list), but at least one has been denied.

In that instance, the Planning Commission denied Variance V-5-93 to split the 4-lot property at 195 San Benito Road in half, along existing lot lines, to create a vacant 4,844+/- sq. ft. site (see attached Assessor's Map). The required finding of "special circumstances applicable to subject property, including size, shape, topography, location or surroundings" could not be made, because there were at least 5 other sites in the immediate vicinity of the same 4,844+/- sq. ft. size (all of which had been developed prior to 1969). In such situations, the alternative is amending the ordinance to make the exception the rule. This would be similar to the exceptions adopted to allow development of 4,950 sq. ft. building sites with 2 units in the R-2 District (BMC Section 17.08.020.B) or with 3 units in the R-3 District (BMC Section 17.08.040.B). In this case, the exception would allow properties in the R-1 Residential District consisting of 4 contiguous lots

of record totaling at least 9,650 sq. ft. that were in single ownership on October 27, 1969, to be developed as two building sites, each consisting of one pair of contiguous lots. Note that the next smallest 4-lot property in the R-1 District is the approximately 9,560 sq. ft. parcel at 115 Santa Clara Street.

4-LOT PROPERTIES LESS THAN 10,000 SQ. FT. IN R-1 DISTRICT		
Assessor's Parcel Number	Address	Approximate Area
007-381-120 & -130	195 San Benito Road	9,688+/- sq. ft.
007-242-110	115 Santa Clara Street	9,560+/- sq. ft.
007-393-250	421 Sierra Point Road	9,000 sq. ft.
007-383-010	246 San Benito Road	8,645+/- sq. ft.
007-402-020	221 Kings Road	7,845+/- sq. ft.
007-452-010	238 Glen Parkway	7,825+/- sq. ft.

The other vacant property identified in the Housing Element that does not qualify under the City's substandard lot provision, but that may otherwise be feasible for development, is Assessor's Parcel Number 007-461-020 at (100) Lake Street (see attached Assessor's Map). This 5,770 sq. ft. property was apparently in common ownership with APN 007-461-030 at 748 San Bruno Avenue in 1969. It consists of 1 record lot and portions of 3 other lots, and it is less than the minimum standard 50 ft. width and 100 ft. depth for building sites in the R-1 District. Variance No. 25 was granted by the Planning Commission in 1963 to allow development of the three partial lots fronting Lake Street. It may be possible to address this situation by clarifying the substandard lot provisions.

As noted above, the substandard lot provisions essentially require that contiguous lots owned in common that do not comply with the minimum standards for lot area or dimensions must be merged to be developed. This runs contrary to the California Supreme Court's 1994 decision in Morehart v. County of Santa Barbara, which found that local zoning regulations cannot conflict with the lot merger provisions of the State Map Act (see below). California Government Code Section 66451.11 (attached) lists the specific grounds under which a city may require merger, including parcel size less than 5,000 sq. ft. in area. The zoning ordinance cannot go beyond these by adding local standards, such as minimum lot width or depth.

To comply, staff recommends that BMC Section 17.32.100 be revised to read:

> *A.* ~~17.32.100~~ Limitations on substandard lots.
> *1.* No structure shall be erected on any substandard parcel *less than 5,000 square feet in area, if it was owned in common with* ~~if the parcel was acquired from the owner or owners of record of~~ contiguous property ~~or the contiguous owner's or owners' transferee after~~ *on October 27, 1969* ~~the time of the adoption of the ordinance codified in this title or prior ordinance~~.

> *2.* In any R district, single-family dwellings only may be erected on any parcel of land, the area of which is less than the building site area *permitted* ~~required~~ for the particular district in which the parcel is located, ~~but~~ if and only if the parcel was *not owned in common with contiguous property on October 27, 1969* ~~in single ownership at the time of the adoption of the ordinance codified in this title or prior ordinance. Subject to obtaining a use permit, private, noncommercial greenhouse may be constructed on substandard lots~~.
>
> *3. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the City after October 27, 1969, and any substandard lot which is only nonconforming in terms of lot width and/or depth shall be recognized as a conforming building site.*

These changes would include using specific and consistent time frames. Note that the phrase "on October 27, 1969" would preserve development rights existing as of that date (consistent with Housing Element Policy H.I.1, "Seek to reduce regulatory constraints on the development of housing, especially infill housing and housing that adds to the mix of types, size, tenure and affordability"), meaning that if a neighbor buys a buildable vacant substandard lot next door, it would continue to be permitted to be developed independently. The section would also include language to grandfather in previously approved lot splits, resubdivisions and lot line adjustments, as well a provision to specifically recognize the full development potential of sites in the R-1, R-2 and R-3 Districts, for example, that are at least 5,000 sq. ft. in area, even though they may not be 50 ft. wide or 100 ft. deep.

Lot Mergers. 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 ordinance would have to be in compliance with the State Subdivision Map Act (specifically, Government Code Sections 66451.10-66451.33, attached). The City's lot merger provisions (BMC Sections 16.12.060–080, attached), adopted in 1982, allowed lots to have been merged without a recorded Notice of Merger, which is no longer permitted per Government Code Section 66451.10. Only those mergers for which the City gave notice to the property owners prior to January 1, 1986, per Government Code Section 66451.19 are still considered valid.

Instead, to initiate lot mergers on its own, the City must adopt a new ordinance in compliance with Government Code Section 66451.11. Prior to adopting such an ordinance, Government Code Section 66451.20 requires that City Council adopt a resolution of intention at least 30 days before adopting the ordinance. Because that is a slightly different process than required to amend the Zoning Ordinance, updating the merger provisions of the Subdivision Ordinance will be separated from the proposed amendments at hand.

Lacking the authority to initiate lot mergers, the City has relied upon voluntary merger of lots 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. This practice should be codified per Government Code Section 66499.20¾, which provides for the adoption of local ordinances to authorize the merger of contiguous parcels under common ownership without reverting to acreage (see attached BMC Chapter 16.40) via recordation of an instrument evidencing the merger. Standard practice has been to record a Declaration of Lot Merger, signed by the property owner and acknowledged by the planning director, to merge contiguous record lots under common ownership.

Dwelling Groups. Under the R-2 District's maximum permitted density of 1 unit per 2,500 sq. ft., a standard 5,000 sq. ft. site is permitted 2 units attached to one another as a duplex, except that a lot which is at least 4,950 sq. ft. in size may be developed with two units (BMC Sections 17.08.020.B & 17.08.040.B). Use Permit approval is required to allow the units to be developed as two separate buildings per BMC Section 17.08.030.H. Because duplexes are not subject to either Use Permit or Design Permit approval (BMC Section 17.42.010.B), it would seem that requiring a Use Permit for two detached units would be an unnecessary governmental constraint upon the provision of housing (Housing Element Table 38, page V-4 and Program H.D.1.b). The one dwelling group project approved thus far by the Planning Commission (via Use Permit UP-5-09 at 242 & 260 Monterey Street) appears to have been well received by the community.

In the R-3 District, a standard 5,000 sq. ft. site is permitted 3 units at a maximum density of 1 unit per 1,500 sq. ft., except that a lot which is at least 4,950 sq. ft. in size may be developed with three units (BMC Sections 17.10.040.A.1 & B). Per BMC Section 17.42.010.B, Design Permits are required for triplexes as well as dwelling groups of 3 or more units. Thus, requiring a Use Permit for a 3-unit dwelling group would seem to be an unnecessary governmental constraint, if a Design Permit is already required. The question in the R-3 District is whether eliminating the Use Permit for a dwelling group of only 2 units (which would not be subject to design review) would encourage underutilization of the density potential in the district and loss of opportunities to provide more housing. In not having adopted a minimum required density in this district, the City appears to have already decided this issue.

Dwelling groups in the future R-SWB District will be dealt with when the southern portion of the Southwest Bayshore subarea is rezoned under the new form-based code zoning.

ATTACHMENTS:

Brisbane Municipal Code Chapter 16.36, Modifications
Government Code Section 66412
Redline Version of Municipal Code Amendments
Variances Granted for Substandard Lots
Assessor's Parcel Maps
Government Code Sections 66451.10-66451.33 & 66499.20¾
Brisbane Municipal Code Sections 16.12.060-080 & 16.40.010-110

ATTACHMENTS (continued):

Draft Resolution RZ-8-11 and Draft Ordinance

Draft City Council Resolution and Merger Ordinance Amendments (to be adopted separately by the City Council per Government Code Section 66451.20)

12/8/11 Email from Dana Dillworth

BRISBANE MUNICIPAL CODE CHAPTER 16.36, MODIFICATIONS

16.36.010 - Modification of provisions of this title. Whenever real property located in any subdivision is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations set forth in this title, the planning commission may permit such modification thereof as may be reasonably necessary if such modifications conform with the spirit and purpose of this title.

16.36.020 - Application for modification. Whenever the subdivider desires to modify any of the provisions of this title pursuant to the provisions of this chapter, he shall file an application with the planning department in a form to be prescribed by such department. Such application shall set forth in detail the requested modification and a general sketch of the proposed tentative map or tentative parcel map as proposed to be modified.

16.36.030 - Referral of proposed modification to proper department. Each proposed modification shall be reviewed by the departments having jurisdiction over the regulations involved and each such department shall transmit to the planning commission its written recommendation, which shall be reviewed prior to the granting of any modification.

16.36.040 - Modification by the commission. The planning commission may approve modification from the provisions of this chapter if it finds such modification to be warranted. The commission may make its approval subject to appropriate conditions.

16.36.050 - Time of filing of application. An application for modification pursuant to this chapter shall be filed after completion of the review period established for the various city departments, public utilities, and other public agencies pursuant to Sections 16.16.120 and 16.16.130. Such application shall be filed prior to the filing of the tentative map or tentative parcel map pursuant to this title.

16.36.060 - Report of modification to council or city engineer. In the event that any modification is approved, a written statement of such modification shall be transmitted to the city council, at the time of approval of a final map, or the city engineer, in the case of approval of a final parcel map.

16.36.070 - Duration of validity of actions. The action of the planning commission in granting a modification shall be within the life of the tentative map or tentative parcel map approval. If a final map or final parcel map is filed within such period of time, it may contain such modifications from the provisions of this title as have been permitted pursuant to this chapter. Except as modified in this chapter all subdivision maps shall comply with all of the provisions of this title.

(Ordinance 282, 1982)

Government Code Section 66412

Government Code Section 66412. This division shall be inapplicable to any of the following:
(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.
(b) Mineral, oil, or gas leases.
(c) Land dedicated for cemetery purposes under the Health and Safety Code.
(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. 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 specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).
(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.
(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.
(g) The conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:
(1) The property was subdivided before January 1, 1982, as evidenced by a recorded deed creating the community apartment project.
(2) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.
(3) If subdivision, as defined in Section 66424, of the property occurred after January 1, 1964, both of the following requirements are met:
(A) A final or parcel map of that subdivision was approved by the local agency and recorded, with all of the conditions of that map remaining in effect after the conversion.
(B) No more than 49 percent of the units in the project were owned by any one person as defined in Section 17, including an incorporator or director of the community apartment project, on January 1, 1982.
(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) The conversion of a stock cooperative, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) The property was subdivided before January 1, 1982, as evidenced by a recorded deed creating the stock cooperative, an assignment of lease, or issuance of shares to a stockholder.

(2) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(3) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(4) If subdivision, as defined in Section 66424, of the property occurred after January 1, 1980, both of the following requirements are met:

(A) A final or parcel map of that subdivision was approved by the local agency and recorded, with all of the conditions of that map remaining in effect after the conversion.

(B) No more than 49 percent of the shares in the project were owned by any one person as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1982.

(5) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(l) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body.

(m) The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a biogas project that uses, as part of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agency ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body.

"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*. Further description of the changes is shown in CAPITAL LETTERS.

Title 16

SUBDIVISIONS

Chapter 16.32 - LOT LINE ADJUSTMENTS

Sections:

16.32.010 - Filing of lot line adjustment application.
16.32.020 - Submittal requirements.
16.32.030 - ~~Distribution of maps~~.
~~16.32.040~~ – Actions by planning director.
~~16.32.050 - Notification.~~
16.32.040 ~~16.32.060~~ – Recordation.

16.32.010 - Filing of lot line adjustment application. *The* ~~An~~ owner*s* of real property may apply for a lot line adjustment *between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created,* by filing an application ~~therefor~~ with the planning director and upon payment of the required application fee.

16.32.020 - Submittal requirements. A. The applicant shall file with the planning director *two full size sets and one reduced set suitable for recordation of a completely dimensioned, scaled site development plan, with bar scale,* ~~a duplicate tracing and such number of copies of the map as required with the application. The map shall be eleven (11) inches by seventeen (17) inches in size, and shall indicate the exterior boundaries, the existing lot lines, and the proposed adjustment of such lines~~ at a scale of not more than one inch equals one hundred feet (1″ = 100′). The *plan* ~~map~~ shall accurately locate all existing rights-of-way, easements and existing structures. The property lines indicated shall be obtained from existing recorded maps. ~~In such instances the property owner may be required to have such buildings and adjoining lot lines accurately located to determine the effect a lot line adjustment would have on the existing development.~~

~~B.~~ The *plan* ~~map~~ shall indicate all dimensions and courses of *existing and proposed* property lines, the assessor's parcel numbers, the zoning of the property, the area of each existing parcel, and the resultant area of the revised lots. The *plan* ~~map~~ shall contain a certification by the ~~parties holding title pursuant to Section 16.20.110, and the name of~~ the *licensed professional* ~~person~~ preparing the *plan* ~~map~~.

B. Legal descriptions of the existing properties, of the portion of the property to be transferred, and of the affected properties reflecting the proposed lot line adjustment shall be

submitted, to be used in the deed effecting the transfer. Descriptions shall also be provided for any existing or proposed easements.

C. A preliminary title report shall be submitted to determine if any of the parcels are encumbered by a deed of trust or mortgage, the liens of which must be modified to correspond to the new lot line, so that a foreclosure will not create an illegal parcel, and to identify any existing easements.

16.32.030 - ~~**Distribution of maps.** Within three (3) days of receipt of a request for a lot line adjustment, the planning director shall refer the application to those departments and local agencies which may have an effect on the proposal. The director shall provide for a minimum of five (5) days for a response before taking any action on the application.~~

~~**16.32.040 -**~~ **Actions by planning director.** A. The planning director *shall* ~~may~~ approve the application for a lot line adjustment if he *or she* finds the following:

1. *The parcels resulting from the lot line adjustment shall conform to the general plan, any applicable specific plan, and zoning and building ordinances and shall not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the zoning ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district* ~~The lot line adjustment does not violate existing codes and policies~~; and

2. *The lot line adjustment granted shall be subject to such conditions as necessary to facilitate the relocation of existing utilities, infrastructure, or easements.* ~~The lot line adjustment will not create difficult or unreasonable access to the parcels; and~~

3. *No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.* ~~The lot line adjustment would not require variances to permit standard development; and~~

~~4. Utilities and public services can be provided to the revised parcels; and~~

~~5. No street dedication or improvements are required.~~

~~B. The planning director may amend such maps as a condition of approval.~~

~~**16.32.050 - Notification.** Approval or disapproval of a lot line adjustment application by the planning director shall appear on the map. A copy thereof shall be transmitted to the applicant. A permanent copy of each lot line adjustment application and map shall be maintained in the planning department, with a copy of each approved map provided to the city engineer and the building inspector.~~

16.32.040 ~~**16.32.060**~~ **- Recordation.** *Within one year of the date of approval, a signed and notarized Approval of Lot Line Adjustment form prepared by the planning director shall be recorded by the applicant, concurrent with any deed transferring property in compliance with the approved Lot Line Adjustment.* ~~Subsequent to the approval of the lot line adjustment by the planning director, the planning director shall transmit the map to the county recorder for recordation.~~

Title 17

ZONING

Chapter 17.08

R-2 RESIDENTIAL DISTRICT

17.08.020 - Permitted uses. The following permitted uses shall be allowed in the R-2 district:

A. Single-family dwellings.

B. Duplexes.

C. Multiple family dwellings containing not more than six dwelling units.

D. *Dwelling groups.*

E. ~~D.~~ Accessory structures and uses incidental to a permitted use.

F. ~~E.~~ Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

G. ~~F.~~ Small family day care homes.

17.08.030 - Conditional uses. The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Cultural facilities.

B. Day care centers.

C. Educational facilities.

D. Group care homes.

E. Large family day care homes.

F. Mobilehome parks.

G. Multiple family dwellings containing seven or more dwelling units.

H. ~~Dwelling groups.~~

~~I.~~ Meeting halls.

I. ~~J.~~ Places of worship.

17.08.040 - Development regulations. The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in Section 17.08.040(B).

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot shall be as follows:

1. Front setback: fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, duplexes or multiple-family dwellings, or any combination thereof, the minimum front setback for single-family dwellings may be the average distance of the front outside wall of the residential structures from the front lot line, if less than fifteen (15) feet.

2. Side setbacks: Side setbacks shall be five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%).

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72, subject to the following exclusions:

1. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

2. In the case of duplexes and multiple-family dwellings, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

G. Height of Structures.

1. Except as otherwise provided in subsection (G)(2) of this section, the maximum height of any structure shall be as follows:

a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or

b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title and so long as the total height of the garage and any permitted living area underneath does not exceed thirty (30) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.

4. New and replacement, irrigated landscapes of one thousand (1,000) square feet, or more, shall be subject to the water conservation in landscaping ordinance. Refer to Chapter 15.70.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

Chapter 17.10

R-3 RESIDENTIAL DISTRICT

17.10.020 - Permitted uses. The following permitted uses shall be allowed in the R-3 district:

A. Multiple-family dwellings;

B. Single-family dwellings;

C. Duplexes;

D. *Dwelling groups.*

E. ~~D.~~ Accessory structures and uses incidental to a permitted use.

F. ~~E.~~ Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

G. ~~F.~~ Small family day care homes.

17.10.030 - Conditional uses. The following conditional uses may be allowed in the R-3 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Cultural facilities;

B. Day care centers;
C. Educational facilities;
D. Group care homes;
E. Large family day care homes;
F. Mobilehome parks;
G. ~~Dwelling groups;~~
~~H.~~ Meeting halls;
H. ~~I.~~ Places of worship.

Chapter 17.32

GENERAL USE REGULATIONS

17.32.055 – Exceptions—Lot area, lot dimensions and lot lines.

A. ~~17.32.100~~ Limitations on substandard lots.

1. No structure shall be erected on any substandard parcel *less than 5,000 square feet in area, if it was owned in common with* ~~if the parcel was acquired from the owner or owners of record of~~ contiguous property ~~or the contiguous owner's or owners' transferee after~~ *on October 27, 1969* ~~the time of the adoption of the ordinance codified in this title or prior ordinance~~.

2. In any R district, single-family dwellings only may be erected on any parcel of land, the area of which is less than the building site area *permitted* ~~required~~ for the particular district in which the parcel is located, ~~but~~ if and only if the parcel was *not owned in common with contiguous property on October 27, 1969* ~~in single ownership at the time of the adoption of the ordinance codified in this title or prior ordinance. Subject to obtaining a use permit, private, noncommercial greenhouse may be constructed on substandard lots~~.

3. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the City after October 27, 1969, and any substandard lot which is only nonconforming in terms of lot width and/or depth shall be recognized as a conforming building site.

B. Modification in conjunction with application for tentative map. Whenever real property located in any subdivision proposed in compliance with Title 16, Subdivisions, is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations set forth in Title 17, Zoning, the planning commission may approve an application for such modification thereof as may be reasonably necessary if such modifications conform with the spirit and purpose of this title.

C. Lot line adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of interior lot lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a Declaration of Merger signed by the property owner and acknowledged by the Community Development Director.

VARIANCES GRANTED FOR SUBSTANDARD LOTS

V-10-80 300 Humboldt Rd.
3,825 sq. ft. site was owned in common with developed site to the north before it was acquired by the applicant

V-2-88 212 Santa Clara St.
62 ft. deep, 6,272 sq. ft. site had been owned in common with adjoining developed property

V-8-88 220 Humboldt Rd.
4,318 sq. ft., 56.5 deep site had been owned in common with property to the rear until City Council approved lot split in 1977

V-14-88 441 Kings Rd.
4,176 sq. ft., 97 ft. deep, 43 ft. wide site had been owned in common with adjoining property until City approved lot split in 1974

V-8-89 253 Alvarado St.
proposed building site met R-1 District standards but was owned in common with 2,500 sq. ft., 25 ft. wide developed lot

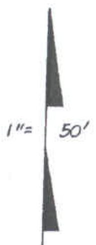
V-11-89 420 Visitacion Ave.
2,930 sq. ft., 36 ft. deep site owned in common with 10 ft. strip acquired without a recorded map

V-2-01 (230) Humboldt Road
3,573 sq. ft. lot owned in common with 2,500 sq. ft. developed property to the rear

V-3-05 (15) Glen Parkway & (720) San Bruno Avenue
2,895.95 sq. ft. 45 ft. deep lot on one street owned in common with 2,500 sq. ft. 45 deep lot around the corner

7 – 38

TAX CODE AREA ______

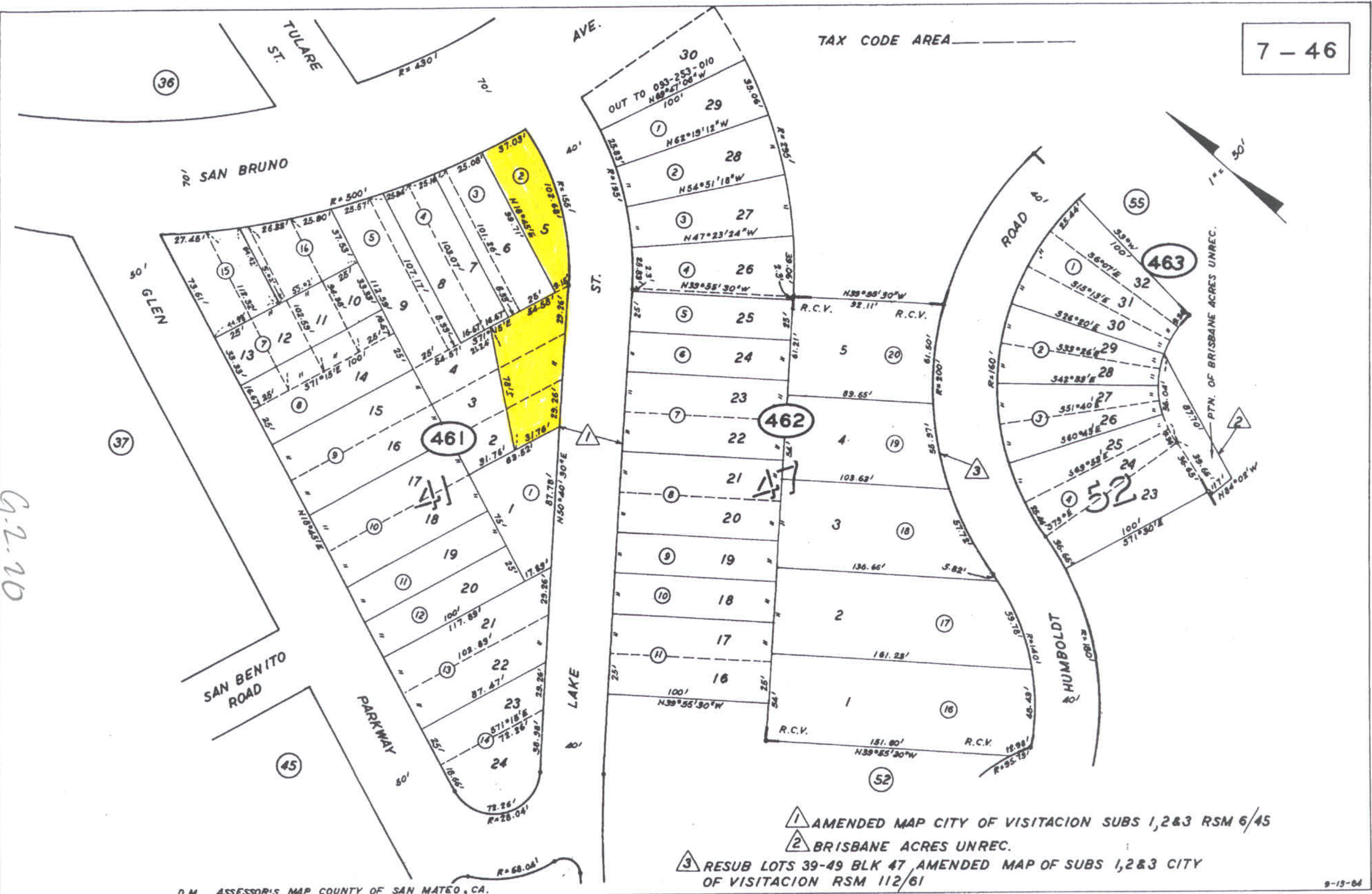


AMENDED MAP CITY OF VISITACION SUBS. 1 2&3 RSM 6/45

8-21-84

D.M. ASSESSOR'S MAP COUNTY OF SAN MATEO, CA.

G.2.19


7 – 46
TAX CODE AREA
TULARE ST.
AVE.
SAN BRUNO
GLEN
SAN BENITO ROAD
PARKWAY
LAKE
ST.
ROAD
HUMBOLDT
461
462
463
41
47
52
36
37
45
55
52
OUT TO 093-253-010
PTN. OF BRISBANE ACRES UNREC.
1" = 50'
1 AMENDED MAP CITY OF VISITACION SUBS 1,2&3 RSM 6/45
2 BRISBANE ACRES UNREC.
3 RESUB LOTS 39-49 BLK 47, AMENDED MAP OF SUBS 1,2&3 CITY OF VISITACION RSM 112/61
D.M. ASSESSOR'S MAP COUNTY OF SAN MATEO, CA.
9-13-84
G.2.10

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

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.

BRISBANE MUNICIPAL CODE SECTIONS 16.12.060-080 & 16.40.010-110
(Ordinance 282, 1982)

MERGER

16.12.060 - 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-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.

REVERSION TO ACREAGE

16.40.010 - Generally. Subdivided real property may be reverted to acreage pursuant to the provisions of this chapter.

16.40.020 - Initiation of proceedings. Proceedings for reversion to acreage may be initiated by the city council on its own motion or by petition of all of the owners of record of the real property within the subdivision. Fees required for processing reversions to acreage shall be paid by the owners at the time of the filing of the petition or by the person or persons requesting the city council to proceed if such proceedings are initiated by the city council on its own motion.

16.40.030 - Form of petition. The petition shall be in a form prescribed by the planning department and shall contain the following:

A. Adequate evidence of title to the real property within the subdivision;

B. Sufficient data to enable the city council to make all of the determinations and findings required by this chapter;

C. A final map which delineates dedications which will not be vacated and dedications which are a condition to reversion;

D. Such other pertinent information as may be required by the planning department.

16.40.040 - Public hearing. A public hearing shall be held on the proposed reversion to acreage. Notice thereof will be given in the time and manner provided in Section 16.16.130.

16.40.050 - Findings by city council. Subdivided real property may be reverted to acreage only if the city council finds that:

A. Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and

B. Either:

1. All owners of an interest in the real property within the subdivision have consented to reversion, or

2. None of the improvements required to be made have been made within two (2) years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later, or

3. No lots shown on the final map or parcel map have been sold within five (5) years from the date such map was filed for record.

16.40.060 - Conditions of reversion. As conditions of reversion, the city council shall require the following:

A. Dedications or offers of dedication necessary for the purposes specified by this title following reversion;

B. Retention of all previously paid fees if necessary to accomplish the purposes of this title;

C. Retention of any portion of required improvement security or deposits if necessary to accomplish the purposes of this title.

16.40.070 - When reversion becomes effective. Reversion shall be effective upon the final map being filed for record by the county recorder, and thereupon all dedications and offers of dedication not shown thereon shall be of no further force or effect.

16.40.080 - Return of fees and deposits. When a reversion is effective, all refundable fees and deposits shall be returned and all improvement security shall be released.

16.40.090 - Tax bond not required. A tax bond shall not be required in reversion proceedings.

16.40.100 - Use of parcel map for reversions to acreage. A. A parcel map may be filed pursuant to this title for the purpose of reverting to acreage land previously subdivided and consisting of four (4) or less contiguous parcels under the same ownership.

B. Any map so submitted shall be accompanied by evidence of title and nonuse or lack of necessity of any streets or easements which are to be vacated or abandoned. Any streets or easements to be left in effect after the reversion shall be adequately delineated on the map.

C. After approval of the reversion by the planning commission, the map shall be delivered to the county recorder.

D. The filing of the map shall constitute legal reversion to acreage of the land affected thereby, and shall also constitute abandonment of all streets and easements not shown on the map. The filing of the map shall also constitute a merger of the separate parcels into one parcel for purposes of this chapter.

E. Except as provided in Section 16.20.110, on any parcel map used for reverting acreage, a certificate shall appear signed and acknowledged by all parties having any record title interest in the land being reverted, consenting to the preparation and filing of the parcel map.

16.40.110 - Resubdivision in lieu of reversion to acreage. A. Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this title.

B. 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.

C. Any unused fees or deposits previously made pursuant to this title pertaining to the property shall be credited pro rata towards any requirements for the same purposes which are applicable at time of resubdivision.

D. Any streets or easements to be left in effect after the resubdivision shall be adequately delineated on the map.

E. After approval of the merger and resubdivision, the map shall be delivered to the county recorder. The filing of the map shall constitute merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all streets and easements not shown on the map.

draft

RESOLUTION NO. RZ-8-11

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING ZONING TEXT AMENDMENT RZ-8-11 TO THE CITY COUNCIL, SUCH TEXT AMENDMENTS PERTAINING TO CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING, REGARDING CHAPTER 17.08, R-2 RESIDENTIAL DISTRICT, CHAPTER 17.10, R-3 RESIDENTIAL DISTRICT, AND CHAPTER 17.32, GENERAL REGULATIONS

WHEREAS, on January 18, 2011, the City Council adopted the 2007-2014 Housing Element; and

WHEREAS, Housing Element Program H.I.1.d calls for amending the Zoning Ordinance to provide a permit process parallel to the modification permitted in the Subdivision Ordinance (Brisbane Municipal Code Section 16.36.040) to allow property to be split into sites that meet the minimum lot area standard even if they do not meet the minimum lot dimension standards; and

WHEREAS, Housing Element Program H.I.1.e calls for clarifying the "substandard lot" provisions of the Zoning Ordinance, and updating the merger ordinance; and

WHEREAS, Housing Element Program H.D.1.b calls for amending the R-2 and R-3 Districts regulations to allow dwelling groups (as defined by Brisbane Municipal Code Section 17.02.240) as a permitted use (instead of a conditional use); and

WHEREAS, on March 8, 2012, the Planning Commission held a public hearing on the draft ordinance, the minutes of which are attached and incorporated by reference as part of this resolution; and

WHEREAS, a Negative Declaration was adopted by the City Council January 18, 2011, for the 2007-2014 Housing Element, and for additional minor zoning amendments regarding lot line adjustments, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act per the general rule is contained in State CEQA Guidelines Section 15061(b)(3).

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-8-11 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on March 8, 2012, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director

draft

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 16.32, LOT LINE ADJUSTMENTS; CHAPTER 17.08, R-2 RESIDENTIAL DISTRICT; CHAPTER 17.10, R-3 RESIDENTIAL DISTRICT; AND CHAPTER 17.32, GENERAL USE REGULATIONS; OF THE MUNICIPAL CODE

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

SECTION 1: Chapter 16.32 of the Municipal Code is amended in its entirety to read as follows:

Chapter 16.32 - LOT LINE ADJUSTMENTS

Sections:

16.32.010 - Filing of lot line adjustment application.
16.32.020 - Submittal requirements.
16.32.030 - Actions by planning director.
16.32.040 - Recordation.

16.32.010 - Filing of lot line adjustment application. The owners of real property may apply for a lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, by filing an application with the planning director and upon payment of the required application fee.

16.32.020 - Submittal requirements. A. The applicant shall file with the planning director two full size sets and one reduced set suitable for recordation of a completely dimensioned, scaled site development plan, with bar scale, at a scale of not more than one inch equals one hundred feet (1″ = 100′). The plan shall accurately locate all existing rights-of-way, easements and existing structures. The property lines indicated shall be obtained from existing recorded maps. The plan shall indicate all dimensions and courses of existing and proposed property lines, the assessor's parcel numbers, the zoning of the property, the area of each existing parcel, and the resultant area of the revised lots. The plan shall contain a certification by the licensed professional preparing the plan.

B. Legal descriptions of the existing properties, of the portion of the property to be transferred, and of the affected properties reflecting the proposed lot line adjustment shall be submitted, to be used in the deed effecting the transfer. Descriptions shall also be provided for any existing or proposed easements.

C. A preliminary title report shall be submitted to determine if any of the parcels are encumbered by a deed of trust or mortgage, the liens of which must be modified to correspond to

the new lot line, so that a foreclosure will not create an illegal parcel, and to identify any existing easements.

16.32.030 - Actions by planning director. A. The planning director shall approve the application for a lot line adjustment if he or she finds the following:

1. The parcels resulting from the lot line adjustment shall conform to the general plan, any applicable specific plan, and zoning and building ordinances and shall not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the zoning ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district; and
2. The lot line adjustment granted shall be subject to such conditions as necessary to facilitate the relocation of existing utilities, infrastructure, or easements.
3. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

16.32.040 - Recordation. Within one year of the date of approval, a signed and notarized Approval of Lot Line Adjustment form prepared by the planning director shall be recorded by the applicant, concurrent with any deed transferring property in compliance with the approved Lot Line Adjustment.

SECTION 2: Section 17.08.020 in Chapter 17.08 of the Municipal Code is amended to read as follows:

17.08.020 - Permitted uses. The following permitted uses shall be allowed in the R-2 district:

A. Single-family dwellings.
B. Duplexes.
C. Multiple family dwellings containing not more than six dwelling units.
D. Dwelling groups.
E. Accessory structures and uses incidental to a permitted use.
F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
G. Small family day care homes.

SECTION 3: Section 17.08.030 in Chapter 17.08 of the Municipal Code is amended to read as follows:

17.08.030 - Conditional uses. The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Cultural facilities.
B. Day care centers.
C. Educational facilities.
D. Group care homes.
E. Large family day care homes.
F. Mobilehome parks.
G. Multiple family dwellings containing seven or more dwelling units.

H. Meeting halls.

I. Places of worship.

SECTION 4: Section 17.10.020 in Chapter 17.10 of the Municipal Code is amended to read as follows:

17.10.020 - Permitted uses. The following permitted uses shall be allowed in the R-3 district:

A. Multiple-family dwellings;

B. Single-family dwellings;

C. Duplexes;

D. Dwelling groups.

E. Accessory structures and uses incidental to a permitted use.

F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

G. Small family day care homes.

SECTION 5: Section 17.10.030 in Chapter 17.10 of the Municipal Code is amended to read as follows:

17.10.030 - Conditional uses. The following conditional uses may be allowed in the R-3 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Cultural facilities;

B. Day care centers;

C. Educational facilities;

D. Group care homes;

E. Large family day care homes;

F. Mobilehome parks;

G. Meeting halls;

H. Places of worship.

SECTION 6: Section 17.32.055 is added to Chapter 17.32 of the Municipal Code to read as follows:

17.32.055 – Exceptions—lot area, lot dimensions and lot lines.

A. Limitations on substandard lots.

1. No structure shall be erected on any substandard parcel less than 5,000 square feet in area, if it was owned in common with contiguous property on October 27, 1969.

2. In any R district, single-family dwellings only may be erected on any parcel of land, the area of which is less than the building site area permitted for the particular district in which the parcel is located, if and only if the parcel was not owned in common with contiguous property on October 27, 1969.

3. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the City after October 27, 1969, and any substandard lot which is only nonconforming in terms of lot width and/or depth shall be recognized as a conforming building site.

B. Modification in conjunction with application for tentative map. Whenever real property located in any subdivision proposed in compliance with Title 16, Subdivisions, is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations set forth in Title 17, Zoning, the planning commission may approve an application for such modification thereof as may be reasonably necessary if such modifications conform with the spirit and purpose of this title.

C. Lot line adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of interior lot lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a Declaration of Merger signed by the property owner and acknowledged by the Community Development Director.

SECTION 7: Section 17.32.100 in Chapter 17.32 of the Municipal Code is repealed its entirety.

SECTION 8: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 9: 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 10: 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

Draft
RESOLUTION 2012-__

A RESOLUTION OF THE BRISBANE CITY COUNCIL
STATING ITS INTENTION TO AMEND THE CITY OF BRISBANE MUNICIPAL CODE
TITLE 16, SUBDIVISIONS,
REGARDING CHAPTER 16.12, TENTATIVE AND FINAL PARCEL MAPS AND
SUBDIVISION MAPS—WHERE REQUIRED (MERGER ORDINANCE)

WHEREAS, Brisbane Municipal Code Sections 16.12.060 through 16.12.080, regarding merger of parcels, were adopted by the City Council in 1982; and

WHEREAS, 2007-2014 Housing Element Program H.I.1.e calls for updating the merger ordinance; and

WHEREAS, California Government Code Section 66451.20 requires that 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 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.

NOW, THEREFORE, BE IT RESOLVED, that the City of Brisbane City Council intends to consider amendments to the merger ordinance contained in Title 16, Subdivisions, of the Brisbane Municipal Code at a public hearing at 7:30 p.m. on ___, 2012, at Brisbane City Hall, 50 Park Place, Brisbane, CA, at which all interested persons will be heard.

BE IT FURTHER RESOLVED, that the City Clerk shall have notice of the adoption of this resolution published per Government Code Section 6061 not less than 30 days prior to adoption of the amended ordinance.

____
CLIFFORD R. LENTZ, Mayor

I hereby certify that the foregoing Resolution 2012-__ was duly and regularly adopted at a regular meeting of the Brisbane City Council on ___, 2012, by the following vote:

AYES:
NOES:

____
Sheri Marie Spediacci, City Clerk

DRAFT MERGER ORDINANCE

draft
ORDINANCE NO. _____

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.

~~**16.12.060 - 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.~~

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.*

~~**16.12.070 - 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.~~

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

~~**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.~~

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

Tune, Tim

From:	Swiecki, John
Sent:	Thursday, December 08, 2011 5:53 PM
To:	Tune, Tim
Subject:	FW: Housing element changes
Attachments:	PC HousingElemenet.doc

From: Dana [mailto:earthhelp@earthlink.net]
Sent: Thursday, December 08, 2011 5:25 PM
To: Swiecki, John; Spediacci, Sheri; Parker, Carolyn; Cunningham Karren AT Papertigerproductions.com
Subject: Housing element changes

To the Planning Commission
From: Dana Dillworth
RE: Study Session Housing Element Substandard Lots -

Dear Commissioners,

Having lived in what would be considered a substandard lot of 25X100 square feet, it is obvious that a housing unit can exist in that amount of space and creates the most affordable modest homes of 1750 square feet (at .7 FAR.) However, the consideration of reducing the minimum lot size to 2500 square feet in the R-2 district city-wide would create subdivision pandemonium.

This change would create a serious environmental impact, which hasn't been considered. By law, it is a growth inducing impact, which must be considered. The additional water hook-ups, the noise and dust from tearing down old buildings and reconfiguring the properties, the impacts of introducing multiple appliances, multiple heat systems, multiple everythings and the loss of privacy to adjacent land owners must be considered. It is not a good idea to half the minimum lot size while you already include an allowable secondary unit on each property. Please reconsider the proposal before you and NOT recommend the change.