

AGENDA ITEM IVA

For Meeting of March 29, 2006

DATE: March 16, 2006

TO: Forestry Review Committee (FRC)

FROM: Kirk Girard, Director of Community Development Services
Prepared By: Kirk Gothier and Steve Werner, Planning Staff

SUBJECT: New Merger Regulations Implementing Section 66451.10 et seq. of the California Government Code (CGC)

Staff Recommendations

1. Review the County New Merger Regulations in Article II of the County Merger Ordinance, and
2. Consider the New Merger Regulations and the Implementation of these Regulations as part of the General Plan Update.

Background

At the June 29, 2005 Forestry Review Committee meeting, Planning Staff indicated that the County was continuing to review the merger laws that govern the sale and development of legal lots in Timberland Production Zones, and would schedule a meeting in the future to discuss these laws.

The application of New Merger regulations to TPZ lands outside of the Williamson Act program has not been implemented since the adoption of these regulations in 1986. Given this lapse and the larger policy issues raised by the ordinance, the Department will be recommending that the Board of Supervisors consider the ordinance and its implementation as part of a suite of timber and agricultural resources policy options that will be presented under the General Plan Update.

The FRC recommendations and comments on the implementation of New Merger will be included in the Department's staff report to the Board. If the Board agrees with the staff recommendations, implementation of the new Merger regulations would not occur prior to completion of the General Plan Update. As part of the General Plan Update, the Planning Division will bring the suite of policy options back to the FRC for review and comments in the next few months.

Discussion

History of Merger in Humboldt County

Merger provisions were first adopted in October 1976 by Ordinance 1104 as Section 317-64 of the County's Zoning Regulations. This section provided that "where the owner of a substandard lot owns adjoining property, the substandard lot is deemed to be *automatically* merged with the

adjoining property. Thereafter the lots must be developed or sold as one unit or lot.” (Emphasis added). Note: This applied only where at least one parcel was not developed with a primary residence or other principally permitted use.

In 1984, State merger law went through major revisions. These revisions—which repealed all previous sections—made a distinction between “old” and “new” mergers. This legislation allowed local agencies the opportunity to preserve the merger of parcels that were *merged by operation of law prior to January 1, 1984* (called “old merger”). Additionally, the provisions of the statute permitted the parcels becoming substandard after January 1, 1984 (called “new merger”) to be merged by the county, provided that a merger ordinance is adopted implementing the new procedures and criteria for parcel merger consistent with the statute.

The deadlines in state law prompting County action on merger occurred shortly after the adoption of the County Framework General Plan. The November 22, 1985 Board report on Merger of Substandard Parcels (Attachment 2) raised concerns over the unregulated transfer of substandard patent parcels on the ability of the county to meet land use planning goals, in particular, allowing smaller land units without regard to general plan policies addressing resource management, suitable access, building site suitability, sewage disposal, water supply, slope stability, and the attendant impacts on public service delivery. Through the legislative process the Board ultimately enacted the two-tier approach identified in Article I, Section 327.5-1 of the regulations.

In 1985, as an urgency measure, the State legislature modified the provisions of the merger statute making it easier to include resource parcels (i.e., timberland, restricted open space, etc.) under the provisions of “old merger” merged by operation of law prior to 1984. This statute extended the time for the County to act to sustain the continued merger of resource lands and substituted a notice requirement in lieu of a recorded notice of merger.

Attachment 1 includes the complete text of the Humboldt County Merger Ordinance, as adopted by the Board of Supervisors on December 9, 1986. This ordinance enacted regulations for resource parcels that were merged by operation of law prior to January 1, 1984 (described above as “old merger”) for a single class of: *“parcels which are enforceably restricted by a Williamson Act Contract”* (see Article I, Purpose and Article III, Continued Merger of Resource Lands). The ordinance also provided for “new merger” (see Article II) as more fully discussed below and “voluntary merger” (Article IV). The County New Merger regulations are based on section 66451.11 of the Government Code in the State Subdivision Map Act.

New Merger Regulations:

Article I, Purpose, Section 327.5-1 specifies that Article II pertaining to “new merger”: “shall only be implemented on parcels within the County which are zoned Timberland Production Zone and parcels which are enforceably restricted by a Williamson Act Contract:” (*Note: New merger has been implemented by the County as a precondition to entry into a Williamson Act Contract since January 1, 1984. The discussion below therefore focuses on lands zoned TPZ.*)

Section 327.5-3 of Article II specifies in part that:

“when any one of two or more contiguous parcels or units of land, which are held by the same owner or owners, does not conform to the standards for minimum parcel size under the applicable zoning designation, the contiguous parcels shall merge,” **if specified requirements are satisfied.**

Section 314-7.4.1.3 of the Humboldt County Zoning Regulations establishes the minimum parcel size in TPZ zones as “160 acres, or 40 acres if the provisions of Government Code Section 51119.5 are met:” (which requires the preparation of a joint timber management plan approved by 4/5th vote of the Board of Supervisors precedent to a “division’ of TPZ zoned land).

Section 327.5-3 (a)(1) provides that for parcels zoned Timberland Production Zone **the specified requirements for merger are that:**

“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 structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit of land.”

*It is important to note that the provisions of State law and Section 327.5-3(a)(2) pertaining to “new merger” contain additional requirements (e.g., standards for sewage disposal and water supply) that do **not** apply to certain resource and open-space lands as specified in Section 66451.30(b) of the California Government Code. This exception includes “timberland” as defined in subdivision (f) of §51104 of the Government Code.” Since Humboldt County’s ordinance restricts new merger to these resource and open space lands, further evaluation of these criteria for new merger is not necessary.*

Sections 327.5-4 through 327.5-11 establish the procedure for implementing mergers of substandard parcels zoned TPZ. Per Section 327.5-5, parcels become subject to new merger when the County provides the owner with a formal “notice of intent to determine status”. Once this notice is given, the County would consider the parcels a single land unit until a final determination is completed. Unless merger is waived pursuant to Section 327.5-9, a notice of merger would be filed for the record with the County Recorder and merged parcels may not be separately conveyed without conformance to the County subdivision regulations. Merger of parcels becomes effective on the date that a Notice of Merger is filed for record with the recorder of the County of Humboldt.

Staff Recommendation on New Merger:

That the FRC recommend that implementation of the ordinance be considered as part of the suite of timber and agricultural resources policy alternatives that will first be reviewed and discussed before the FRC, and then presented to the Planning Commission and Board of Supervisors as part of the public hearings for the General Plan Update.

This process would allow for the design of the implementation to mesh with the alternatives that are developed and considered as part of the Plan Update.

ATTACHMENTS

Attachment 1: Humboldt County Merger Ordinance 1762 (*Email attachment as an Adobe Reader File*)

Attachment 2: Board Report on Merger of Substandard Parcels dated November 22, 1985