

Chapter 17.05

MERGER OF PARCELS

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17.05.000 Purpose. This chapter is enacted for the purpose of amending the existing merger ordinance of the town (previously Section 17.04.100) to bring it into compliance with Section 66451.11 et seq. of the California Government Code. The town had a merger ordinance in existence prior to January 1, 1984. (Ord. 450 §2(part), 1985).

17.05.010 Definitions. When used in this chapter the following terms shall have the following meanings:

(1) "Contiguous" means touching or adjoining at more than one point. Property shall be considered contiguous even if it is separated by roads, streets, utility easements or railroad rights-of-way.

(2) "Merger" means the joining of two or more contiguous parcels or units of improved or unimproved land, which are held by the same owner or owners, into one building site pursuant to this title. Parcels or units may include land division or subdivision lots, assessor's tax parcels, or lots created by deed.

(3) "Minimum parcel size" means the minimum size to permit development under established zoning, subdivision or other town codes. Minimum size includes lot area required by an applicable slope ordinance, policy or zoning density guidelines.

(4) "Same Owner." Contiguous parcels or units of land are considered to be held at the same owner if one owner holds at least a fractional share in two or more contiguous parcels. (Ord. 450 §2(part), 1985).

17.05.020 General. Except as provided for in this chapter, two or more contiguous parcels or units of land shall not merge by virtue of the fact that such contiguous parcels are held by the same owner if they were created in one of the following manners:

- (1) Pursuant to the provisions of the State Subdivision Map Act;
- (2) Pursuant to Ross Municipal Code, Title 17;

- (3) Pursuant to any prior town ordinance regulating the division of land; or
- (4) Were not subject to such provisions at the time of their creation. If such creation has occurred, no further proceeding under the provisions of this title shall be required to permit sale, lease or financing of such contiguous parcels or units of land. (Ord. 450 §2(part), 1985).

17.05.030 Requirements for merger on or after January 1, 1984. 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 all 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 of land;
- (2) With respect to any affected parcel, one or more of the following conditions exist:
 - (A) Comprises less than five thousand 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 slope stability standards or zoning density guidelines,
 - (E) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability,
 - (F) Its development would create health or safety hazards,
 - (G) Is inconsistent with the general plan other than minimum lot size or density standards.

For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that the notice of intent to determine status is recorded pursuant to Section 17.05.050.

Subsection (2) shall not apply if 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. (Ord. 450 §2(part), 1985).

17.05.040 Effective date of merger. A merger of parcels or units of land becomes effective on the date a notice of merger is filed for record with the recorder of the county. A notice of merger shall specify the names of the record owner or owners and shall particularly describe the real property that is the subject of the merger. (Ord. 450 §2(part), 1985).

17.05.050 Notice of intent to determine status. Prior to recording a notice of merger, the public works director or town council 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 Title 17 of the Ross Municipal Code, 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 shall also inform the owner or owners that the public works director or town council is authorized to make a determination of merger or nonmerger in accordance with Ross Municipal Code, Section 17.05.080 in the event a request for hearing is

not filed within thirty days pursuant to Ross Municipal Code, Section 17.05.060. The notice of intention to determine status shall be filed for record with the county recorder of the county on the date that notice is mailed to the property owner. (Ord. 450 §2(part), 1985).

17.05.060 Request for hearing. At any time within thirty days after recording of the notice of intention to determine status, the owner of the affected property may file with the public works director a request for a hearing on determination of status. (Ord. 450 §2(part), 1985).

17.05.070 Procedure for hearing. Upon receiving a request for a hearing on determination of status, the director shall fix a time, date and place for a hearing to be conducted by the town council and shall so notify the property owner by certified mail. The hearing shall be conducted not less than thirty days following the public works director's receipt of the property owner's request for hearing, but may be postponed or continued with the mutual consent of the public works director 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 Title 17 of the Ross Municipal Code. At the conclusion of the hearing, the town council shall make a determination the affected parcels are to be merged or not to be merged and shall so notify the owner of its determination. A determination of merger shall be recorded within thirty days after conclusion of the hearing as provided for in Section 17.05.050. (Ord. 450 §2(part), 1985).

17.05.080 Determination when no hearing is requested. If within the thirty-day period specified in Section 17.05.060 the owner does not file a request for hearing on determination of status, the public works director may, at any time thereafter, make a determination the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided in Section 17.05.040 no later than ninety days following the mailing of notice required by Section 17.05.070. (Ord. 450 §2(part), 1985).

17.05.090 Nonmerger. The town council or public works director, as applicable, may make a determination of nonmerger, whether or not the affected property meets the standards of Section 17.05.030 provided the following findings are affirmatively made:

- (1) The parcels were created by a parcel or final map in accordance with the Ross Municipal Code in effect at the time of their creation,
- (2) The nonmerger and subsequent development of the individual parcels would not be contrary to the public health, safety or welfare. (Ord. 450 §2(part), 1985).

17.05.100 Notice of nonmerger. If, in accordance with Sections 17.05.070, 17.05.080 or 17.05.090 the public works director or town council determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 17.05.040 a release of the notice of intention to determine status, recorded pursuant to Section 17.05.050 and shall mail a clearance letter to the then current owner of record. (Ord. 450 §2(part), 1985).

17.05.110 Parcels merged prior to January 1, 1984. In the case of parcels or units of land merged prior to January 1, 1984, for which no notice of merger was recorded, the following procedure shall apply:

- (1) The public works director shall no later than January 1, 1986, record a notice of merger.
- (2) At least thirty days prior to recording a notice of merger, the public works director 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 town council why such notice should not be recorded.

(3) No notice of merger shall be recorded if the parcel would be deemed not to have merged pursuant to the criteria specified in Section 17.05.120. (Ord. 450 §2(part), 1985).

17.05.120 Criteria for unmerger. Any parcel or unit 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:

- (1) The parcel meets each of the following criteria:
 - (A) Comprises at least five thousand square feet in area,
 - (B) Was created in compliance with the applicable laws and ordinances in effect at the time of its creation,
 - (C) Meets current standards for sewage disposal and domestic water supply,
 - (D) Meets the slope stability standards and zoning density guidelines,
 - (E) Has legal access which is adequate for vehicular and safety equipment access and maneuverability,
 - (F) Development of parcel would create no health or safety hazards,
 - (G) The parcel would be consistent with the general plan or any applicable plan, other than a minimum lot size or density standards;

(2) And, with respect to such parcel, on or before July 1, 1981, one or more of the contiguous parcels or units of land is not enforceably restricted as 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. (Ord. 450 §2(part), 1985).

17.05.130 Application and determination of unmerger. Upon application made by the owner and payment of any requested fees, the town council or public works director, as applicable, shall make a determination the affected parcels have merged or, if meeting the criteria of Section 17.05.120 are deemed not to have merged. As part of an application for a determination on merger, an owner may request a public hearing. If a public hearing is requested, the town council shall make the determination on merger. If no public hearing is requested, the director shall make the determination on merger. In either event, the public works director shall provide thirty days' written notice to the owner of the affected parcels of the date and place of the hearing or decision on the determination of merger. (Ord. 450 §2(part), 1985).

17.05.140 Notification to the owner. The owner of the affected parcels shall be notified as follows:

(1) Upon a determination that the parcels meet the standards specified in Section 17.05.120, the public works director 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 title.

(2) Upon a determination that the parcels have merged and do not meet the criteria specified in Section 17.05.120, the public works director shall issue to the owner and record with the county recorder, a notice of merger as provided in Section 17.05.040. (Ord. 450 §2(part), 1985).

17.05.150 Merger of contiguous parcels as authorized by Government Code Section 66499.20-3/4. As authorized by California Government Code Section 66499.20-3/4, contiguous parcels under common ownership may be voluntarily merged without reverting to acreage upon the recordation of a parcel map or other town approved instrument evidencing the merger. Such

voluntary merger may be approved without public hearing by the director of public works or the director's designee. (Ord. 478, 1990).