MENDOCINO COUNTY PLANNING COMMISSION
DRAFT MINUTES
DECEMBER 6, 2001

6A. AA 2-2001 – MOORES – North of Manchester

Request: Appeal of a determination by the Department of Planning and Building Services and County Counsel that the appellant's property is subject to merger and the County can not issue four separate Certificates of Compliance as requested.

Mr. Lynch gave a quick overview of the project.

Mr. Frank Zotter reviewed the history of the merger of parcels.

Mr. Moores handed out copies of merger law with portions highlighted.

A lengthy discussion ensued between primarily Mr. Moores, Chief Deputy County Counsel Frank Zotter, Chairman McCowen, and Commission Lipmanson regarding interpretations of both state and local regulations related to merger and unmerger laws.

The public hearing was declared open.

Two people from the public felt that this issue would not to resolved and felt that the Commission should move on to the 3-acre timber conversion discussion.

The public hearing was declared closed.

Commissioner Berry recused himself due to possible benefit for his family.

Upon motion by Commissioner Lipmanson, seconded by Commissioner Nelson and carried by the following roll call vote, IT IS ORDERED that the Planning Commission concludes that the Moore's property meets the criteria subject to merger, therefore, upholds Mr. Zotter's opinion and denies the appeal.

AYES: Barth, Little, Nelson, Lipmanson, McCowen
NOES: None
ABSTAIN: Berry
ABSENT: Calvert

RECESS: 12:00 – 1:30 p.m.

MENDOCINO COUNTY MEMORANDUM

TO: MENDOCINO COUNTY PLANNING COMMISSION

FROM: PLANNING AND BUILDING SERVICES

SUBJECT: ADMINISTRATIVE APPEAL #AA 2-2001 MOORES

DATE: OCTOBER 4, 2001

Mr. William Moores owns Assessor's Parcels Number 132-210-37,38,39,40 and 41 (formerly AP# 132-210-34), which are within Agricultural Preserve/Williamson Act and are located south of Irish Gulch and the Irish Beach Subdivision. Mr. Moores and his legal counsel, Stephen K. Butler, are appealing a Mendocino County Counsel Opinion that Mr. Moores' parcels are subject to the County's merger regulations. Attached is a copy of Mr. Frank Zotter's legal opinion regarding this issue. Also attached are copies of correspondence from Mr. Moores and Mr. Butler.

In August of 1975, an application signed by Mr. Moores on behalf of Moores Associates, requested to rezone the eastern 220-acre portion of a 416-acre parcel to Forest Conservation (FC) and place the property into Agricultural Preserve. An ordinance approving the rezoning and the Agricultural Preserve was approved by the Board of Supervisors effective February, 1977. A subsequent boundary line adjustment #B 6-81 resulted in the 220 acre easterly portion being separated from the 196 westerly portion of the property which had not been placed in FC-Preserve zoning. The current Assessor's Parcels identified above range in size from 4 to 29 acres and were created from the easterly 220-acres outside the County Division of Land process. Staff does not know the basis for the Assessor establishing separate parcel numbers for these parcels.

Over the last few years there have been several meetings and discussions regarding the County's position with regard to the effect of the County's merger laws on Mr. Moores property. It should be noted that no actual Certificate of Compliance application has been submitted by Mr. Moores, therefore Planning and Building Staff has not completed a detailed research of the Moores' property in light of current merger regulations. Without specific research on the chain of title for this property, Staff can not actually make a determination as to the actual number of underlying parcels that could be recognized if merger were not an issue. Normally, an appeal would occur after a dissatisfied applicant has filed an application for Certificates of Compliance and received a PBS determination as to the number of certificates to be recognized. In this case, no application for CC's has been filed on the subject property. The applicant is appealing County Counsel's interpretation of the merger laws that would be applied if such an application were filed.

The history of merger regulations is quite complicated due to a number of changes in the law since the 1970's. Prior to 1977, the various laws generally caused parcels to merge when they were contiguous and came under common ownership. In 1977 State legislation provided that undersized parcels would merge automatically unless a county provided otherwise. In 1978 the "automatic merger" was replaced by regulations that resulted in parcels merging only when a local agency adopted an ordinance compelling such merger. In 1983, the State Legislature established what are presently the merger regulations in effect today. These regulations caused parcels to "un-merge" unless a local agency recorded notices of merger within two years. Legislation sponsored by Assemblyman Cortese on behalf of Mendocino County extended the timeframes for merger and provided that "resource lands" could still be merged without a notice of merger if the following criteria were met:

- Parcels had to be contiguous.
- Parcels had to be in common ownership.
- Parcels had to be undersized for the zoning (i.e., not meet minimum parcel size required by zoning).
- The County had sent a notice of merger to affected owners of "resource lands" by January 1, 1987.

Staff Recommendation: Staff has concluded that the Moores' property meets the above criteria, therefore, is subject to merger, therefore recommends that the Planning Commission uphold Mr. Zotter's opinion and deny Mr. Moores appeal.

Attachments

AA 2-01
7-12-01
Rec 40193
$680.00
4

LAW OFFICES OF
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3333 MENDOCINO AVENUE
POST OFFICE BOX 1494
SANTA ROSA, CALIFORNIA 95402
FAX: 707 546-1360

TELEPHONE: (707) 523-1181

STEPHEN K. BUTLER

June 21, 2001

Mendocino County Planning Commission
c/o Mendocino County Planning Department
501 Low Gap Road, Room 1440
Ukiah, CA 95482

Re: Appeal of Denial / Certificates of Compliance / APN # 132-210-37-41

To whom it may concern:

I represent William Moores, the heir of the estate of Gertrude J. Elder. Please be advised that we are appealing the decision of Mendocino County in the form of a letter from Frank Zotter, denying the issuance of certificates of compliance for the reasons set forth in his correspondence to me of June 12, 2001, a copy of which is enclosed. Also enclosed are copies of my correspondence to Mr. Zotter and Mr. Moores' correspondence to Mr. Zotter in relation to this matter. That correspondence sets forth the reasons and basis for this appeal.

I have attached a check in the amount of $680 to cover the appeal fee, if one is required. Please call me at (707) 523-1181 if you need additional information from me.

Very truly yours,

STEPHEN K. BUTLER

SKB:cj
Enclosures
c: William Moores

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STEPHEN K. BUTLER

June 30, 2000

Frank Zotter, Jr.
Chief Deputy
Mendocino County Counsel
Administration Center
501 Low Gap Road, Room 1030
Ukiah, CA 95482

Re: William Moores/Gertrude Elder Estate/Certificate of Compliance Issues

Dear Frank:

I have had an opportunity to review your letter of January 31, 2000, and the variety of issues addressed therein. Thank you for the invitation to further respond to your concerns prior to your office rendering a final opinion in connection with this matter. In response to your analysis, I have four basic points to urge. They are as follows:

1. The Parcels Were Not Validly Merged under Ordinance Number 3370.

Without intending to beat a dead horse, it appears that the most critical issue is whether the parcels in question were validly merged under the statutory scheme adopted by Mendocino County in 1982 (Mendocino County Code Sections 17-106 and 17-108). It seems inescapable to us that the two pertinent code sections must be read together and that, to the extent that those sections imposed mandatory obligations upon the County, such obligations had to be discharged in order for a valid merger to have taken place. Since we are in agreement that no notice of merger was ever recorded, the pivotal point in the whole discussion is whether, pursuant to Section 17-108, a notice of merger should have been recorded in order to perfect a valid merger under Ordinance Number 3370.

On pages 8 and 9 of your letter, you provide evidence with respect to the fact that the County had no intention, through the adoption of Section 17-108, of imposing an obligation on itself to conduct title searches going back to the 1800s. You conclude that "[t]herefore, the most logical way to interpret Section 17-108 is to conclude that the 'knowledge' referred to in that ordinance was intended to apply to a situation when a County employee recognized that a specific instance of merger had occurred. Upon this discovery, the notice provisions of Section 17-108 would have been triggered."

We accept your conclusion that the County was under no mandatory obligation to conduct title searches on each parcel of property in the County in order to perfect a merger under

Ordinance Number 3370. We also concur that the "knowledge" giving rise to a mandatory obligation to record a notice of merger pursuant to Section 17-108 arose in a situation where County employees or officers recognized that a specific instance of merger may have occurred. We assert, as will be discussed later in this section, that such actual "knowledge" did exist and that the mandatory obligation referred to in Section 17-108 arose. We also assert that having failed to discharge its mandatory obligation to record a notice of merger pursuant to Section 17-108, no valid merger occurred under Ordinance 3370.

Even if, as you argue, the parcels are properly classified as resource lands for purposes of Section 66451.301 and 66451.302, the County was still under a mandatory obligation pursuant to Section 17-108 to record a notice of merger by January 1, 1988, if the County had actual "knowledge" of the merger. The County had such actual knowledge at that time. Western Title submitted and the County reviewed information showing the parcels and patents on the entire area in question.

In December of 1985, Jared G. Carter filed an application for certificates of compliance on the Nichols Ranch then owned by Mickey Elder ("Nichols Ranch property"). The Nichols Ranch property was adjacent to the parcels subject to the present dispute ("Moores property"). Copies of documents relating to that application are enclosed for your review. As you will note, the application related to Assessor's Parcels Numbers 132-210-31 and 32. The adjacent Moore's property was then designated Assessor's Parcel Number 132-210-34.

Mr. Carter's request for certificates was denied in December of 1996 and an appeal ensued. During the course of Mendocino County's review of the merits of Mr. Carter's application for certificates on the Nichols property, planning staff became aware, although it was not included as part of Mr. Carter's application, that there were four parcels underlying the Moores property. The basis of the December 30, 1986, administrative determination to deny Mr. Carter's requested certificates was noted in a memorandum from Ray Hall to the Board of Supervisors dated August 31, 1988, in which he stated that "The conclusion was that to issue three certificates of compliance on Assessor's Parcel Numbers 132-210-31 and 132-210-32 would result in nine parcels south of Irish Gulch." Four of the nine parcels referred to in Mr. Hall's memorandum are the parcels underlying the Moores property.

Although the potential for merger of the parcels underlying the Moores property was discussed at the time, the County never issued a single certificate of compliance on the Moores property as part of the resolution of Mr. Carter's appeal. Perhaps this was in recognition of the fact that Assessor's Parcel Number 132-210-34 was under separate ownership and that the Board did not have appropriate jurisdiction over the parcel in the context of Mr. Carter's appeal.

In any event, the fact remains that, in December of 1986, County staff clearly knew both of the multiple parcels underlying the Moores property and also that such parcels could have

qualified for merger pursuant to the County's contention that such parcels were resource lands for purposes of Sections 66451.301 and 66451-302. Despite such actual knowledge and in contravention of its own merger ordinance, no notice of merger was recorded prior to January 1, 1988.

In light of the above, with respect to the Moores property, the County need not have conducted any title research. Under your interpretation of Section 17-108, County employees had "knowledge" of the potential for merger and failed to discharge the County's self imposed mandatory obligation. Having failed to comply with its own mandatory merger requirements, we contend that the parcels were not validly merged under Ordinance Number 3370. To the extent that the County contends that some automatic merger took place under Section 17-106, notwithstanding the failure to comply with Section 17-108, any merger under Section 17-106 is, in our opinion, either void or, at the very least, voidable by way of an action for declaratory relief under Section 66451.19(e) of the Subdivision Map Act.

2. Continued Merger Did Not Take Place Under Map Act Sections 66451.301 and 66451.302.

Even if the parcels underlying the Moores property are properly classified as resource lands, no continued merger under Section 66451.301 and 66451.302 took place because, as explained in Section 1 above, the parcels were not validly merged under the mandatory requirements of Ordinance Number 3370. Although we are not abandoning our claim that the County did not give proper notice of continued merger pursuant to Section 66451.302, the adequacy of the County's notice becomes moot if the parcels were never validly merged in the first place pursuant to Ordinance Number 3370.

3. Resource Lands Issue.

Since the primary points raised above stand independently of the characterization of the property as resource or non-resource lands, I am not going to go into this issue in any detail in this letter. However, suffice it to say, that the record shows that the only reason that the parcels were placed under a Williamson Act Contract was for recreational purposes in partial fulfillment of conditions for an overall planned development on adjacent lands. As you know, the adjacent development zoning was unilaterally changed by the County in 1987. Mr. Moores has detailed information with respect to the non-suitability of the property for timber and range land purposes. He can document the fact that the property will not meet minimum County requirements for timber land or range land designations. If you wish to consider this additional information, we would be most happy to provide it.

4. Equitable Issues.

Last, for the record, I would like to note that the failure of the County to record a notice of merger within the 1986 to 1988 time period continues to result in prejudice to my client. The County Assessor continues to appraise the property as if it were composed of separate legal parcels. Mr. Moores informs me that Margaret Ballou, the Executor of the Estate of Gertrude Elder, was required under the will to distribute to all siblings in equal value amounts. Mr. Moores also informs me that the California state inheritance tax appraiser appraised the Moores property, as did the Assessor, as separate legal parcels based on the title of record. That title, of course, includes no notice of merger. The result of all of this is that the siblings taking an interest in the Moores property under the estate will have received, to their prejudice, grossly over valued land if the County refuses to issue certificates recognizing the validity of the underlying parcels.

To conclude, your prior letter indicates that you were unaware that, in this case, more than one employee of the Planning Department did "have knowledge". Since no notice of merger has ever been recorded and since you have previously indicated that, with actual knowledge, recordation of a notice was required by the County's merger ordinance, we hope that you will agree that the four certificates of compliance should be issued. My client hopes to avoid acrimony and litigation. However, he will not surrender his rights without an unequivocal demonstration that his claims are meritless.

Thank you again for your time and attention to this matter. If you should have any questions regarding this letter or would like to discuss its contents prior to issuing a formal response, please do not hesitate to call. We remain willing to address your points and hope you agree that it is less costly for both parties to exchange arguments in this context rather than in court. We await your reply.

Very truly yours,

STEPHEN K. BUTLER

STEPHEN K. BUTLER

SKB:cj
Enclosures
c: Bill Moores

8 mer this

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NEWELL RAWLES (1909-1976)
DONALD C. HINKLE
JARED G. CARTER
THOMAS S. BRIGHAM
G. SCOTT GAUSTAD
JOHN A. BEHNKE
MYRNA L. OGLESBY

December 31, 1985

RECEIVED
JAN 3 1986
BY
PLANNING & BUILDING SERVICES
Ukiah, CA 95482

Ray Hall
Planning Department
Courthouse
Ukiah, CA 95482

Dear Ray:

This is an application for certificates of compliance on the Nichols Ranch owned by Mickey Elder. We are seeking three certificates of compliance for portions of original patents: 3 patent 257, 3 patent 255, 3 patent 254.

A plant guarantee from Western Title Insurance Company, and various deeds and maps are attached as is an application including the road information request (all that says is that all three parcels border State Highway 1), and our check for $80.00 as the filing fee.

As you know, this piece of property has an elaborate history, as it was recently zoned PD and planned for rather intense development; but, in conjunction with the County's approval of the local coastal plan, it was most recently rezoned to 160 acre minimum as pasture land. An application to amend that plan and redesignate this property for development has been filed and should be processed. Neither that application, nor this application should be veiwed as waiving any rights that the owners of this property may have against the County or any other agency or person resulting from the designation of this property as pasture land 160 acre minimum. This application cation should be viewed, rather, as an effort to minimize the damage caused by the recent redesignation as 160 acre minimum in the event that the general plan amendment applied for is denied.

Please process this application as soon as possible. If any additional information is required, please let me know.

Sincerely,

Jared G. Carter

JGC:lm
Enclosure
cc: Mickey Elder
William Moores
Gordon Moores

STAFF

Appli[illegible] on for

CERTIFICATE [illegible] COMPLIANCE

MENDOCINO COUNTY PLANNING & BUILDING SERVICES
Courthouse, Ukiah, CA 95482
Telephone: (707) 463-4281

Case No. CC 2-86
Date Filed 1-13-86
Fee $ 85—
Receipt No. 14435
Received by KAJ

Owner's Name: Gertrude J. Elder (previously Gertrude J. Moores)
Address: P.O. Box 781, Ukiah, California 95482

Phone No: (707) 462-1098

Assessor's Parcel No.: 132-210-~~30~~ 32 and 31

No. of lots assumed: 3

Street address Hwy. 1, immediately South of Irish Beach

IMPROVEMENTS

No Existing Improvements

- [ ] Single family dwelling
- [ ] Mobile Home
- [ ] Other

Comments:

- [ ] Public Water supply
- [ ] On-site water supply source
- [ ] Other
- [ ] Public Sewer
- [ ] On-site sewage system
- [ ] Other

This application must be signed by either t[illegible] [illegible]er or an authorized agent. The agent shall su[illegible] [illegible]t the owner has granted authorizatior [illegible] [illegible]ate of Compliance.

This CC pcls you not w/of pubsect pute

Gertrude J. Elder
OWNER
GERTRUDE J. ELDER

[signature]
AGENT
JARED G. CARTER

Address: 169 Mason Street
Suite 300, Ukiah, CA 95482

Phone No. (707) 462-6694

NEWELL RAWLES (1909-1976)
DONALD G. HINKLE
JARED G. CARTER
THOMAS S. BRIGHAM
G. SCOTT GAUSTAD
JOHN A. BEHNKE
MYRNA L. OGLESBY
SANDRA L. APPLEGATE

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(707) 462-6694
(707) 462-6666

January 17, 1986

Kathleen A. Johnson
Planning Tech. I
Department of Planning
and Building Services
Courthouse
Ukiah, California 95482

Re: Certificate of Compliance 2-86 (Moores)

Dear Ms. Johnson:

We are in receipt of your letter dated January 14, stating an error in our application for certificates of compliance on the above-referenced matter.

After reviewing the application, we find that you are correct and the A.P. numbers should be 132-210-31 and 32. Please make the change on the application.

We apologize for any inconvenience this may have caused.

Sincerely,

Jared G. Carter

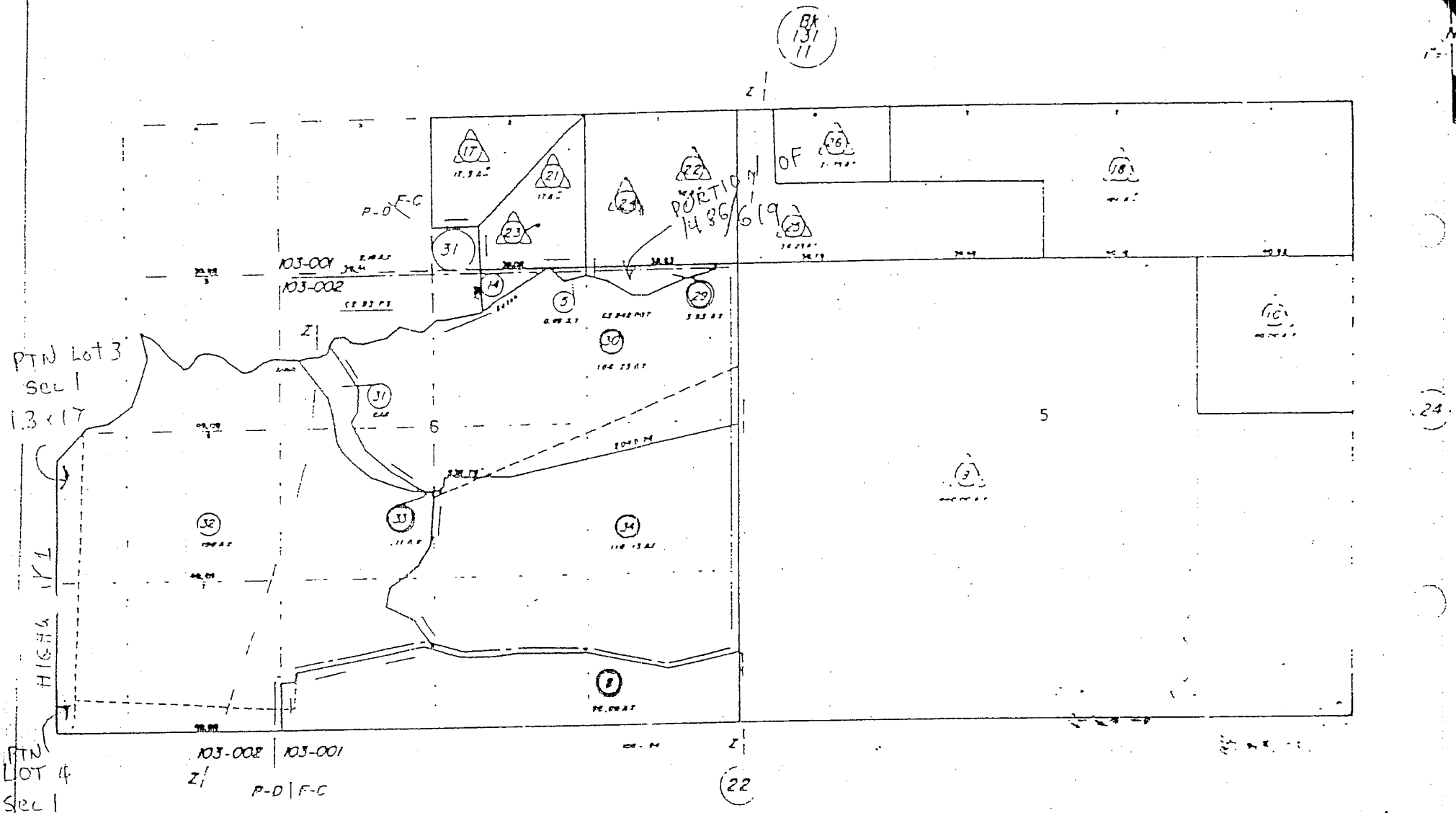
JGC:lm
Enclosure
cc: Gertrude Elder

MAP 5 - Plant Gatee

Sec. 5 & 6 T.13N. R.16W M.D.B.&M.

Z
F-C
P-D
TPZ

103-001
103-002



NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map
County of Mendocino, Calif
REVISED 3-14-85

NEWELL RAWLES (1909-)
DONALD G. HINKLE
JARED G. CARTER
THOMAS E. BRIGHAM
G. SCOTT GAUSTAD
JOHN A. BEHNKE

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(707) 462-6665

April 18, 1986

Frank Lynch
Planning Department
Courthouse
Ukiah, California 95482

Re: CC No. 2-86

Dear Mr. Lynch:

On March 19, 1986, my secretary called to see if you had received the above mentioned application and, at that time, you stated that it was being processed. Please give me an update on the status of this application.

Sincerely,

Jared G. Carter

JGC:lm
cc: William Moores

H. PETER KLEIN
COUNTY COUNSEL

FRANK ZOTTER, JR.
CHIEF DEPUTY

DEPUTY COUNTY COUNSELS

SANDRA L. APPLEGATE
IRVEN L. GRANT
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FAX NUMBER:
(707) 463-4592

CYNTHIA T. MONTESONTI
OFFICE MANAGER

June 12, 2001

Stephen K. Butler, Esq.
Clement, Fitzpatrick & Kenworthy
P. O. Box 1494
Santa Rosa, CA 95402

BY FAX AND FIRST CLASS MAIL

Re: William Moores/Gertrude Elder Certificate of Compliance Issues

Dear Steve:

This is in response to your letter of June 30, 2000, regarding the above topic. Please accept my apologies for the length of time that it has taken me to respond. One of the difficulties (which I am sure that you have also encountered in dealing with these issues) is that the law and the facts here are both so complicated that it takes a while simply to become reacquainted oneself with these concepts each time the file is opened. That requires quite a bit of uninterrupted time, which unfortunately is not a luxury I often have today.

In reviewing the correspondence that has gotten us to this point, I believe that the sequence was as follows. You initially wrote to my office regarding property that Mr. Moores inherited from his mother, Gertrude Elder, on which he believes there are multiple underlying parcels created by patents. You contended that these parcels were not validly merged by the County's 1981 ordinance—or that, if they ever were merged, they later "unmerged" by virtue of changes in state law after 1983. Accordingly, Mr. Moores believes he is entitled to multiple certificates of compliance.

I wrote back and stated that the County disagreed, relying on Government Code §§ 66451.301 and 66451.302 ("§ .301" and "§ .302"). I contended that there were seven discreet "elements" that the County had to show, including mailing of the notice that was required by § .302, but that all seven elements could be established in Mr. Moores' case. I also contended that the notice was properly mailed to Gordon Moores, Mr. Moores' brother, because that was the only name on the last equalized assessment roll. Finally, I pointed out that the notice permitted by § .302, although a requirement for the property to "remain merged" under the "resource lands merger" scheme, simply directed the landowner to contact the County for further information. It did not itself require any action by a landowner that might have prevented merger if Mr. Moores had "acted in time."

Your letter to me in response then raised four points, which I will address in

sequence:

1. **Whether the parcels were validly merged under Ordinance 3370.**

Your discussion focuses first on the language of Mendocino County Code § 17-108 (1982 amendment, Ordinance No. 3370) which required the County to record a document, with notice to the landowner, whenever the County "had knowledge" of an automatic merger under the earlier-adopted Mendocino County Code §§ 17-106. You contend that the County "had knowledge" because in December, 1985, Jared Carter filed an application for certificates of compliance on the Nichols Ranch which was adjacent to the Moores property in question here. You cited language in an August 31, 1988 memorandum from Planning Director Raymond Hall to the Board of Supervisors, in which he refers to "nine parcels south of Irish Gulch." You interpret the "nine parcels" referred to in that memorandum as including four parcels underlying the Moores property.

The County did not issue any certificates of compliance at that time because, as you noted, only the Nichols property, not the Moores property, was before the County. You contend, however, that the Hall memorandum indicates there "was knowledge" on the part of the County in 1986, and the County therefore had a duty to record a notice of merger in order for the parcels to "have been merged under a valid local ordinance." As part of your argument, you contend that "the County was still under a mandatory obligation pursuant to Section 17-108 to record a notice of merger by January 1, 1988 if the County had actual 'knowledge' of the merger."

I respectfully disagree, for three reasons. First, I am not certain that the evidence that the County "had knowledge" of these mergers is as definitive as you suggest based on the 1986 memorandum from Ray Hall to the County Board. There is nothing the passage that you quote from the Hall memorandum to indicate that it refers to the four parcels you contend underlie the Moores property. Rather, that is a conclusion that you and your client have reached, which you state separately (i.e., not as a quotation from the Hall memorandum) in your letter.

Second, the County was not required, even by § 17-108, to record notices of merger in order to *accomplish* merger. Section 17-108 was wholly concerned with giving notice of *the fact of* merger, not with making it take place. That section is silent on the consequences of the failure to record a notice. Moreover, as I said in my previous letter, by contrast the language of § 17-106 is quite specific: "Merger of lots, parcels and units of land . . . *shall occur* when at least two contiguous lots, parcels, or units of land are held by the same owner, one of which does not conform to standards for minimum lot parcel size . . . ."

Nothing in § 17-108 itself provides, for example, that failure to record the notice causes parcels to "unmerge." Merger clearly took place automatically under § 17-106, and § 17-108 is not a "retroactive condition precedent" for merger to have occurred in the first place—especially when the County might not have obtained

"knowledge" of a given merger until years later.

I submit that the failure to comply with § 17-108 during the brief time that it was in effect did not "unmerge" property. It might instead have been an defense if the County tried to prevent someone from selling land otherwise subject to merger if no notice was recorded (and if it could be shown that the County "had knowledge"). Such a landowner could have argued that the County was estopped to claim that the parcels were merged if it had knowledge but failed to record the notice required by § 17-108.

All of this is academic, however, because of my third reason: by 1986 merger was controlled by state law, not local ordinance. By the time Mr. Hall's memorandum was written, the legislation which added §§ .301 and .302 had been in effect since September, 1985. There was no longer any reason for the County to rely on its own ordinance, including § 17-108, because the Legislature had changed state law to allow "resource lands merger" under those two statutes.

I therefore also disagree with your comment that I quoted above—that the County was under a duty to continue to use its own merger ordinance, either in general or for resource lands merger, until January 1, 1988. Neither § 17-108 nor § .301 *mandates* that counties continue to use local-agency-initiated merger (including recordation of notices) until January 1, 1988. Section 17-108 itself is silent about the effect of a failure to record a notice. Likewise, § .301 states only that, if a notice of merger "had not been recorded" by that date, then the parcels "shall be deemed not to have merged" unless all "seven elements" under §§ .301 and .302 could be shown.

This, of course, is really the crux of my disagreement with the position articulated in your letter: § .301 and § 17-108 are mutually exclusive. As to a given parcel, a county cannot simultaneously have complied with § 17-108 and also qualify for resource lands merger under § .301; the two simply cannot co-exist. This is because one of the conditions precedent for § .301 even to apply is that a notice of merger *not* have been recorded.

As shown by Assemblyman Cortese's comments in that attorney general's opinion I cited last time, Mendocino County was well aware that there was a "no recordation" provision in the legislation because this County itself was had lobbied for the bill. The County did not record notice of merger under § 17-108 because state law had already pre-empted the recordation requirement. For those parcels which qualified as "resource lands," therefore, including the Moores property, state law—allowing merger with a mailed notice instead of a recorded one—controls.

2. **Whether the Parcels "Continued to be Merged" for Purposes of §§ .301 and .302.**

I believe that this issue is answered in the discussion above, especially, my third point. Quite simply, to hold that recordation of a notice of merger was a

condition precedent to valid merger under § 17-108 so that a parcel "continued to be merged" under §§ .301 and .302 is to engage in self-contradiction. Only those parcels for which a notice of merger was *not* recorded are even eligible for coverage (and, hence, "continue to be merged" under §§ .301 and .302). It is a simple preemption issue: the County sought the legislation precisely so it would *not* have to record notices. The legislation covers all "resource lands" parcels, whether they fell under § 17-108 or otherwise. To the extent that that ordinance is inconsistent with state law, state law controls.

3. **Resource Lands Issue.**

You next argued that the property in question were not really "resource lands," but were only placed in an agricultural preserve to fulfill a condition for a planned development on adjacent property. While I will take your word that this is true, for purposes of §§ .301 and .302, it doesn't matter what the character of the property was or what the landowner's intent was in putting the land under a Williamson Act contract. Furthermore, even apart from §§ .301 and .302, not all land subject to a Williamson Act contract has to be "resource land."

As to the first point, .301 of course does not actually refer to "resource lands." It actually requires only that "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." Likewise, § .302 requires that notice identify the land as having been identified by the County as falling within one of several contracts imposing restrictions which qualify for favorable tax treatment under Revenue and Tax Code § 421. Neither statute requires that the County, in deciding to whom to send out the notice, actually determine to what "resource use" the land was being put.

Government Code § 66451.30, subdivision (b), to which § .301 refers, is verbatim with the language in § .302 about what lands qualify. It also just requires that the land fall within one of the categories listed for a Williamson Act contract, or that it have been zoned TPZ. Moreover, Mendocino County sought the definition that appears in both statutes precisely because it already had a database of lands subject to Williamson Act contracts or in the TPZ classification. This is also borne out in Assemblyman Cortese's comments.

Of equal significance, of course, is that there is no general requirement that land subject to a Williamson Act contract actually be "resource land" in the sense that the land be "agricultural" or "resource producing." Government Code § 51201, part of the Williamson Act, defines "agricultural preserve" as follows (emphasis added):

> "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), *recreational use as defined in subdivision (n)*, or open-space use as defined in subdivision (o), or any

combination of those uses and which is established in accordance with the provisions of this chapter.

Thus, while all agricultural preserve contracts fall under the Williamson Act, not all contracts that fall under the Williamson Act are actually agricultural preserves. Some of them—including the Moores property—are devoted to recreational or open-space uses, not "agriculture." We therefore disagree with your contentions on this issue.

4. **Equitable Issues.**

The fourth issue that you raised is what you deem to be an equitable issue, based in part on the County Assessor having continued to appraise the property as if it were separate parcels, and on the state inheritance tax appraiser treating it likewise. I'm not sure how this applies to the land use issues here. Many properties in the County have more APNs assigned to them than there are separate legal parcels. The reasons for this can vary from the APN representing the division of different tax code areas to a citizen simply having applied for, and been granted, more than one APN for a single parcel.

Mr. Moores has remedies with respect to each of those other officials. He can argue—on the basis of prior correspondence from this office if nothing else—that, for purposes of sale, lease, or financing, the County deems this property to be a single parcel of land.

In sum, therefore, even if the Hall memorandum of August, 1986 is evidence of "knowledge," the County still maintains that those parcels were merged by § 17-106 of the original County merger ordinance, and that § 17-108 did not undo that. By virtue of Government Code §§ 66451.301 and 66451.302, we also believe that those parcels are merged today.

Sincerely,

Frank Zotter Jr.

Frank Zotter Jr.
Chief Deputy County Counsel

FZ/sz

cc: Alan Falleri, Chief Planner

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March 31, 1999

STEPHEN K. BUTLER

VIA FACSIMILE ONLY
(707) 463-4592

Peter Klein, County Counsel
Frank Zotter, Deputy County Counsel
Mendocino County Counsel's Office
Administration Center
501 Low Gap Road, Room 1030
Ukiah, CA 95482

Re: Gertrude Elder/Certificate of Compliance Issues

Dear Peter and Frank:

I represent the heirs of the estate of Gertrude J. Elder in the matter of whether certificates of compliance should issue for the Mendocino County property in which the heirs have an interest ("property"). I am addressing this letter to both of you because of Peter's knowledge of the historical treatment of these parcels and Frank's current land use responsibilities. I have reviewed the facts underlying the County of Mendocino's ("County") treatment of the four parcels underlying the property. After completing my examination of the material relating to the parcels, I am of the opinion that multiple certificates of compliance should issue to recognize the historic parcels. My analysis follows:

1. FACTS.

a. The Williamson Act Contract Entered into Was to Further Recreational Goals Related to Development on Adjacent Lands.

The property was originally zoned FC as an undeveloped recreational area adjacent to land that the County had zoned PD (planned development). As part of the implementation of the overall adopted area plan, the County and property owners agreed, in 1977, to place the property under a type II Williamson Act Contract which was recorded at Book 1077, Page 609, Official Records of Mendocino County. Around 1986, in order to induce the Coastal Commission to approve the County's local coastal plan, the County unilaterally changed the area plan by re-zoning the property range land 160 acre density and removing the planned development zone from the adjacent lands owned by the Elder estate.

The Williamson Act Contract which was executed between the County and the owners of the property reflected the property's multiple ownership, including ownership interests of Gertrude J. Elder and Mendocino Coast Properties. At the time of the execution of the contract, Mendocino County regulations allowed recreational lands to be placed under contract without the necessity of income related to agriculture or timber. No one has disputed the owner's claim that prior to 1988 they did not use the land to produce an income from the sale of agricultural or timber products.

b. The County Merger Ordinance Requires Recordation of a Notice of Merger When the County Has Knowledge of Merger Potential.

On January 1, 1981, any prior merger of the property by operation of law was vitiated by virtue of the adoption of what was then Government Code Section 66424.2 which was added by Chapter 1217, statutes of 1980. Thereafter, on January 12, 1982, the County of Mendocino adopted Ordinance No. 3370, an Ordinance Providing for the Merger of Parcels. Section 17-108 of Ordinance No. 3370 required the County to provide notice and record a Statement of Merger "whenever the Mendocino County Planning Department has knowledge that real property has merged pursuant to Section 17-106 of the Mendocino County Code." Based on the January 21, 1999, Memorandum from William Moores to your office, it appears that the planning department had knowledge that the parcels were ostensibly merged pursuant to the provisions of Ordinance No. 3370.

c. The State Subdivision Map Act Sets Forth Requirements for Continued Parcel Merger.

After the adoption of Ordinance No. 3370, there then ensued a variety of amendments to the Subdivision Map Act relating to the subject of parcel merger. This flurry of legislative activity culminated in the adoption of Chapter 796, Statutes of 1985, setting forth detailed and precise procedures relating to the merger of historic parcels. These provisions generally provide for unmerger of parcels absent the recordation of a Notice of Merger prior to January 1, 1988. In connection with certain resource lands, the detailed statutory procedure provided for the continuing merger of resource parcels meeting the criteria of Government Sections 66451.30(b)(1)-(5), absent recordation of a Notice of Merger by January 1, 1998, on the condition that the County must have sent notices to "all owners" of any such resource land prior to January 1, 1987.

In late 1986, the County of Mendocino sent out hundreds of notices to property owners in an effort to beat the January 1, 1987, deadline set forth in Government Code Section 66451.302. The County Assessor's records were used to determine where and to whom the required notices would be sent. The assessor's records existing in December of 1986 clearly indicated multiple owners of the property. Notwithstanding this fact, the County, at best, sent

notice to only one of the three property owners and admittedly failed to send a notice to "all owners" as required by Section 66451.302.

The property is currently held in multiple separate ownerships. Deeds were executed in 1988 conveying separate parcels to Mr. Moores, to Gertrude Elder and Mendocino Coast Properties. To date, the County has not undertaken any procedures pursuant to Government Code Section 66452.11 in an effort to merge the four historic parcels.

2. Analysis.

In Morehart v. County of Santa Barbara (1994) 7 Cal. 4th 725, the California Supreme Court found that the Map Act Procedures dealing with merger were preemptive in connection with the regulation of the sale, lease and financing of individual parcels. (Morehart at page 764) The Supreme Court referred to the system of State regulation as providing "land owners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be individually merged." (Morehart at page 752) The Attorney General has referred to the detailed State merger provisions as "stringent requirements" (69 AG 209, 210) and specifically noted that Section 66451.302 "requires" the City or County to have sent notices by January 1, 1987, to landowners of property subject to Section 66451.301, advising them of the provisions of the new law. (69 AG 209, 211) The legislative history of the 1985 amendments to the Subdivision Map Act noted that the legislation "would give them [cities and counties] a grace period for notifying owners of merged parcels and would make the notification process simpler."

Our position is fairly simple and straight forward.

a. No Notice of Merger Was Recorded Prior to January 1, 1988.

Mr. Moores has informed me that County staff has advised him that there is no requirement to record a Notice of Merger by January 1, 1988, because they consider the property as "land devoted to an agricultural use" for purposes of Government Code Section 66451.30(b)(2) by virtue of the existence of the Williamson Act Contract. In defining "land devoted to an agricultural use," Section 66451.30 cross-references Government Code Section 51201 which states: "'Agricultural use' means uses of land for purposes of producing an agricultural commodity for commercial purposes." It is undisputed that, notwithstanding the Williamson Act Contract on the property, the property has never been devoted to an agricultural use meeting the definition of Section 51201. In fact, consistent with Mendocino County Williamson Act regulations, the property was placed in an agricultural preserve contract for purposes not related to agriculture. Accordingly, we believe that reliance upon Section 66451.30(b)(2) as a basis for arguing continuing merger is misplaced. Unless the property is properly characterized as resource lands pursuant to Section 6645.30, the property would have become automatically unmerged on January 1, 1988.

b. The County Failed to Provide Notice to "All Owners" as Required by Section 66451.302 and Therefore There Was No Continuing Merger.

Assuming for purposes of argument that the property was properly characterized as "resource lands" for purposes of Section 66451.30(b), the property would have become unmerged by virtue of the County's failure to give the mandated statutory notice required by Government Code Section 66451.302 prior to January 1, 1987. In this case, the requisite statutory notice was not given because the County failed to send such notice to "all owners" notwithstanding the fact that the County was well aware of the multiple ownership of the property as evidenced not only by the previous Williamson Act Contract but also by the County's own assessment rolls existing in December of 1986. We believe that the failure to give this mandatory notice resulted in the unmerger of the four parcels on January 1, 1987, and that absent subsequent County procedures pursuant to Government Code Section 66451.11, such parcels remain unmerged today. We believe that this position is consistent with standard rules of statutory interpretation.

Statutes should be interpreted to avoid an absurd result (Granberry v. Islay Investments (1984) 161 Cal. App. 3d 382, 388). To interpret a failure to give adequate notice under Section 66451.302 as having no effect on the continued merger of resource parcels would achieve an absurd result. Additionally, the intent of the legislature should be divined and the statute should be given a reasonable and common sense interpretation consistent with its apparent purpose. (See e.g. DeYoung v. San Diego (1983) 147 Cal. App 3d 11, 17) We believe that common sense dictates that the failure to adhere precisely to the legislature's detailed due process requirements in connection with parcel merger can only be interpreted to provide for the unmerger of affected parcels.

c. The County Failed to Record a Notice of Merger as Required under Ordinance No. 3370 When it Had Knowledge of Prospective Merger.

Continued merger under Section 66451.301 occurred only where "land merged under a valid local merger ordinance which was in effect prior to January 1, 1984." It is our position that, in light of the fact that the County had knowledge of the eligibility of the parcels for merger, and failed to comply with the due process requirements incorporated into former Government Code Section 66424.2(c) and Section 17.108 of the Mendocino County Code, the parcels were not validly merged under Ordinance No. 3370. If the property had not been validly merged pursuant to Ordinance No. 3370, then it would not have met the criteria for continued merger pursuant to Section 66451.301.

3. Our Request.

My clients are mindful of the important policy considerations underlying the issue of parcel merger and the importance of these regulations to the County. My clients are also sensitive to, and do not wish to create a situation whereby, any action of the County in

connection with our request for certificates is utilized as justification for wholesale issuance of certificates for other parcels in the County. In consideration of these issues, we offer the following in an effort to narrow the effect of a decision by the County to issue multiple certificates in connection with the property:

a. In scanning the pages of the assessment roll which I have been provided, I see only one instance [our's] where the assessment roll clearly refers to multiple ownership of the identified property.

b. This situation also presents a question of whether the County validly utilized its 1982 Ordinance to effect a merger of the four parcels in view of the fact that the County Planning Department had apparent notice of the opportunity for merger of the property and failed to follow its own notice and recordation requirements as set forth in Ordinance No. 3370.

c. We believe that it is highly doubtful that you will find another case in the County where a Williamson Act Contract was entered into for recreational purposes as partial implementation of an area plan that had development zoning on adjacent parcels owned by the same owner. This is a unique case wherein the contract was executed as partial implementation for development zoning given to the same owner on adjacent parcels. The contract was not for production of an agricultural commodity. Moreover, no agricultural commodity has been produced on the property from the date of the contract through 1988, the year in which the parcels were separately deeded out.

d. We believe that it is even more unlikely that another County property owner would have the planning activity background applicable to the property that would have led County planning staff to have specific knowledge of the availability of the property for merger in the mid 1980s.

e. We believe that the combination of the factors set forth above would narrow the fact pattern to such a degree that other property owners could not use this situation as precedent for the justification of certificates on other parcels in the County.

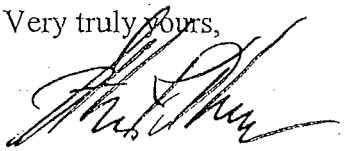
To summarize, we believe that the four factors set forth above can be used by the County in construction of a narrow fact pattern relating to this property to limit any precedential effect of a favorable County decision to issue multiple permits. If the County Counsel's office does not concur with the factual history recited above or wishes us to consider elements of argument which we have not discussed here, please feel free to give me a call to discuss further our positions as they relate to the property.

My clients' fundamental objective is to avoid a fight and to resolve arguments in an effort to avoid an adversarial application process. We appreciate the fact that Peter, in the past, has encouraged us to examine the legal arguments and factual history of this case prior to filing an

application for certificates. If your office agrees with our opinion that certificates should issue, the property owners will proceed to file an application for the four certificates upon receiving your response. If your office disagrees with our position in this matter, we would very much like to know the basis for your opinion so that we may address it through further research, if required. However, my clients are adamant that an application will be pursued.

We appreciate your consideration of these materials and await your response. Thank you for your time and attention to this matter.

Very truly yours,



STEPHEN K. BUTLER

SKB:cg
cc: clients

1/25/99 Memo from William Moores to Peter Klein and Frank Zotter

Re: Further input on the investigation into merger or not of AP#132-210-37 through 41

Dear Peter and Frank:

In more carefully reading section 66451.301 of the Map Act one is referred to Section 66451.30(b) paragraphs (1) to (5) for essential criteria definition for lands subject to the section. In reviewing 66451.30(b) (1) to (5) I don't find that any of the criteria in these 5 cases apply to this property. I presume that the county planning staff assumed that the property fit into paragraph (2). However, the land is not timberland as classified by the county and law since it clearly wasn't zoned TPZ in 1978 when timberlands were designated and zoned. To qualify for property under section 51201(b) {copy attached} the land would have had to have been in agricultural use in 1981 (or thereafter) as defined by 51201 (b)-which means according to 51201(b) producing an agricultural commodity "for commercial purposes". We have not used the land to produce any grazing products for commercial purposes in 1981. The land was simply put into preserve to fulfill a condition of zoning other land development (which other development designation was subsequently taken away). The land has been used primarily for recreation. On March 26,1991 the Board of Supervisors approved a notice of termination of the preserve because the land had not been used for any agricultural purposes in the prior 5 years as required by the criteria and we were supportive of that finding. I have enclosed a copy of the Board action on cancellation.

As an additional factor the county several years ago recalculated the values on the property and has assigned an appraisal figure for each of the four parcels reflecting legally separate parcel valuations. We have been paying taxes for years based on the valuations as four separate parcels. If you have any questions, please call to discuss.

Sincerely,

Bill Moores
707-526-3759

1/21/99 Memo from William Moores to both Peter Klein and Frank Zotter

Re: Merger-unmerger issue related to cc's on AP# 132-210-37 through 41-4 parcels

Dear Peter and Frank:

1) During our discussion in your office on 1/19/99 about the 4 cc's that I hope to obtain from the county Frank and again confirmed that he was concerned about wheather the county had met the legal requirements of Section 66451.302 that "the county shall send a notice to all owners of real property affected by the" alleged merger. At that discussion I presented Frank with a copy of the the mailing list that planning informed me was used to send notices to all owners. I have again attached the copy of that mailing list as provided to me by planning. The properties affected by the alleged merger were owned by three completely separate owners: myself, Gertrude J. Elder and Mendocino Coast Properties, Inc.. The county admitted that it did not send a notice of the alleged merger of these parcels to Gertrude Elder or Mendocino Coast Properties but says that it did mail to myself since I am on the list. The mailing list clearly indicates that I am only a minority title interest owner. I have told you that I do not recall having received a notice from the county about any alleged merger of these parcels which are zoned rangeland. I did receive a notice about alleged merger of TPZ zoned parcels that I personally own north of Irish Gulch- which parcels had previously been created by minor division and parcel map filings (ie. a notice I received simply because the parcels were zoned TPZ even though they weren't merged). Frank explained that there is a presumption in law that I was correctly mailed for the property south of Irish Gulch since I am on the list. Frank acknowledged that the fact that the other owners were not notified of the alleged merger of these parcels may be a critical defect. The language in the section we are dealing with clearly says "all owners" are to be notified. We had no idea that the county even alleged that these parcels were merged until we received the county letter in 1995-by which date the subject deeds separating the owners by prior patent and deeds boundaries had already been recorded.

I checked with an attorney today about cases that might give guidance on wheather the county could successfully contend that all owners were notified under the above factual conditions. I was informed that unless the county can get a staff member to sign a sworn document that Mendocino Coast Properties and Gertrude J. Elder were sent notices required for these parcels by the date required, the notice requirement has not been met. Frank had conceded earlier that defective notice requirements would be a basis for an opinion that the cc's should be issued under section 66499.35(a).

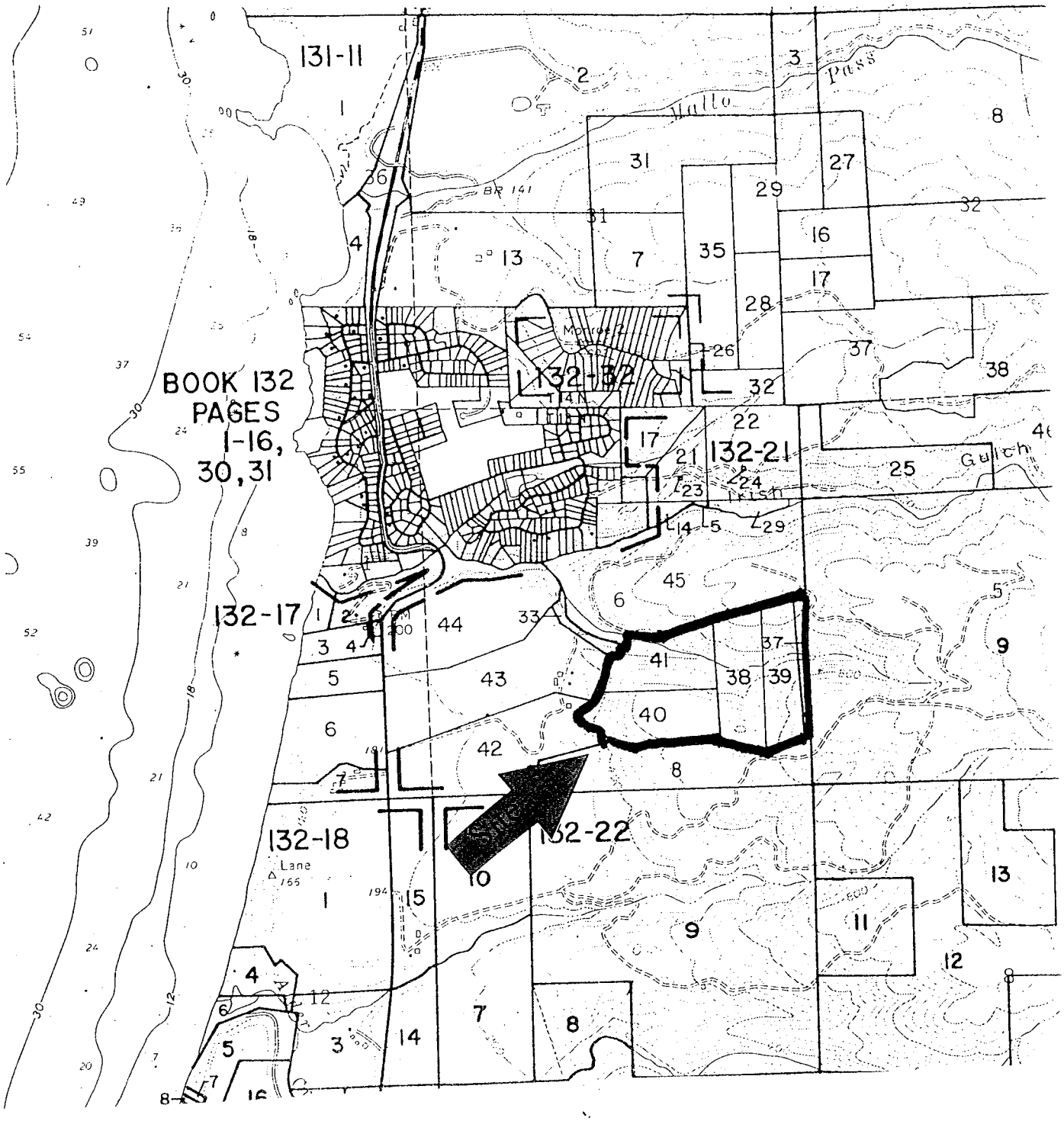
2) During our meeting Frank Zotter had offered that our case would also be strengthened if we could show that the county had knowledge that these parcels were merged under the county's merger ordinance but did not record the notice of merger required under the ordinance. We know that planning had knowledge and did not record a notice by the time of their letter of 1995. Following our meeting I asked planning to search it's files for prior planning activity and two BLA's came up for which I faxed maps to Frank. I talked with Mr. Chaty about the BLA process and he acknowledged to me that the following is the case: (A) The mapping required by a BLA application is to show assessor's parcels, not legal parcels, and that planning

is aware that assessor's parcels often contain several legal parcels, (B) the county uses the assessor's maps which usually contain dashed lines (such as shown on the attached AP map for this area) which indicate the boundaries of prior deeds and patents. The patent lines and deed lines do reflect on the assessor's map used in the application, (C) at the time these BLA's were completed planning only required deed language to insure that there was only one assessor's parcel, not one legal parcel as is now required, (D) the resource zoning was reflected on the BLA maps, (E) the 1981 BLA was completed at the very time that the county had just adopted the merger ordinance affecting properties in this very zone category and ((F) the BLA applications focused the attention of the county on this very area. Given these circumstances I think there is a good basis for alleging that the county had knowledge at this time and did not record a notice as required.

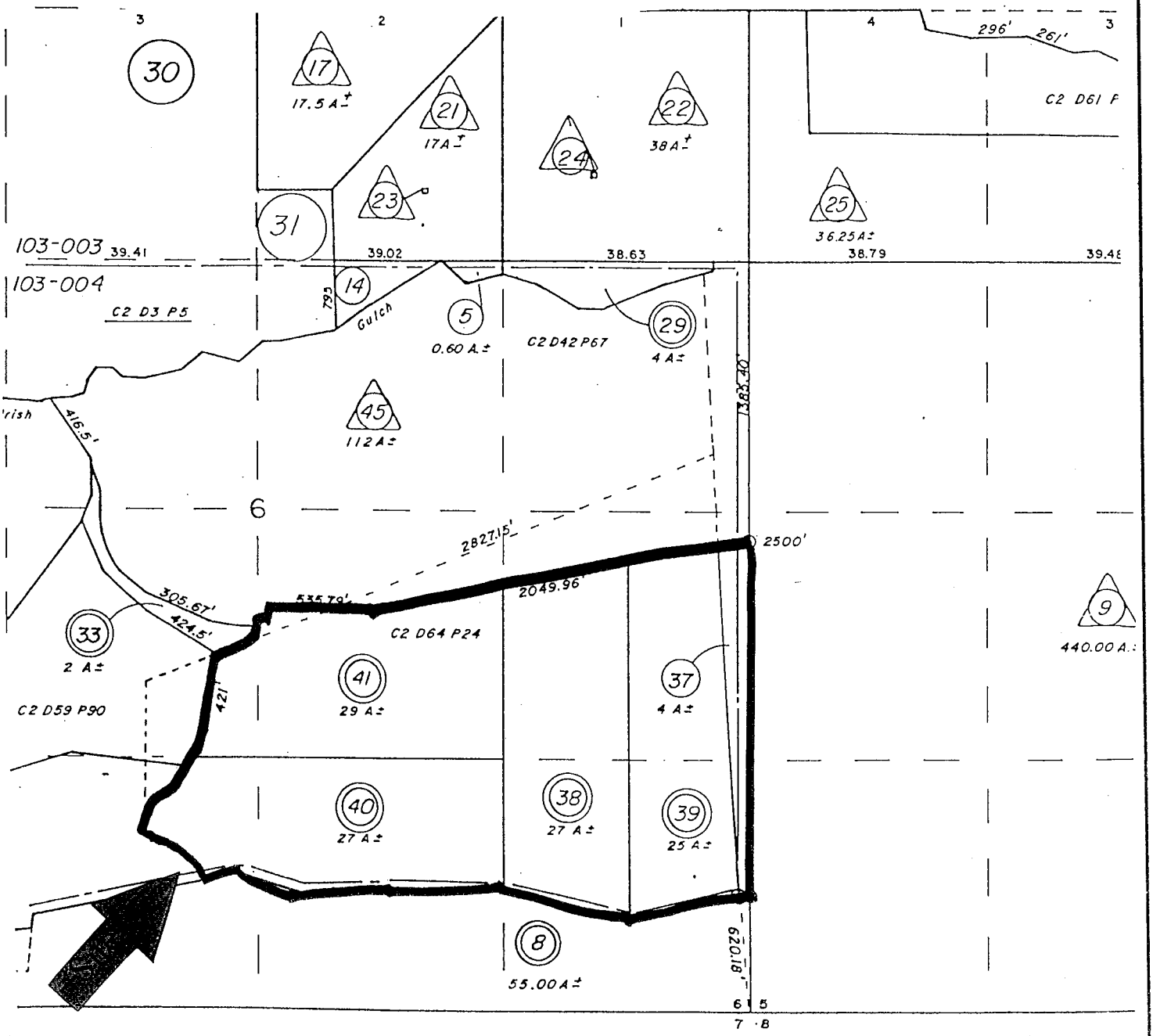
3) The area that we are dealing with was zoned resource as a part of the county process of designating a planned unit development zoning for a large development on adjacent land that we own. I hope you can understand our feeling of betrayal when we allowed this area to be zoned resource in exchange for other lands being zoned for development and subsequently finding the county unilaterally removing the PD zoning as sacrificial offering to get it's coastal Plan adopted.

I am certainly sympathetic to your department needing to have a basis for advising planning that the cc's should be issued under section 66499.35(a) and that the 4 parcels have not been merged by the merger ordinance. I also realize that you do not want the basis for such advise to be of the nature that brings into question the merger of other lands throughout the county that were merged by the county's merger ordinance. Surely the issues of inadequate legal notice particular to the three owners in this case and the knowledge of the county that these parcels were alleged to have been merged but no notice was recorded as required by the merger ordinance itself and Section 66451.302 are deficiencies unique to this case that will not cause problems for other mergers in the county. If you would like me to obtain a legal opinion of the issue of the inadequate notice to all owners, I am willing to provide that for your file. As you know I have not had an attorney involved in this matter and I am looking for a resolution of this matter that avoids litigation but allows the heirs to my mother's estate to salvage something out of the carnage left by the county's treatment of us in the Coastal plan adoption process. Looking forward to hearing what next step you advise. Feel free to call to discuss as necessary.

William Moores



CASE NUMBER:	OWNER/APPLICANT:	AGENT:
# AA 2-01	Moores, William	Stephen K. Butler
APN: 132-210-37,38, 39, 40, 41	Location Map	NORTH ↑ Not to Scale



CASE NUMBER: # AA 2-01	OWNER/APPLICANT: Moores, William	AGENT: Stephen K. Butler
APN: 132-210-37,38, 39, 40, 41	Assessor's Parcel Map	NORTH ↑ Not to Scale