MENDOCINO COUNTY BOARD OF SUPERVISORS
PLANNING APPEAL FORM

Appeals must be received in the Executive Office within the appeal period, 10 days from the date of the hearing* (post-marks will NOT be accepted). The Clerk of the Board or Planning and Building Services will verify appeal fee amounts*. The appeal fee must accompany the appeal letter/form in order to be considered valid.

**Verify with Planning and Building Services or with the Clerk of the Board of Supervisors*

Date Appeal Submitted*: 11/17/23 Appeal Fee*: $ 2674.00
☐ Verified ☒ Receipt Generated

Case No.: _____ Applicant: _____

Heard by: _____ Hearing Date: _____

Source:
Planning Commission • MHRB • Zoning Administrator • Administrative (Planning) • Coastal Permit Administrator

Printed Name, Address, and Phone No. of Appealing Party:

William and Tona Moores
c/o Colin W. Morrow, Esq.
P.O. Box 1214, Mendocino, CA 95460 (cmorrow@vmm-law.com)
(707) 380 - 1070

Basis for Appeal *(Please provide sufficient detail to describe the nature of the appeal. Letters describing appeal may also be attached):*

Please see atatched letter detailing appeal of revocation of boundary line adjustments in B_2018-0068 & B_2019-0054.

Signature
Colin W. Morrow, Esq.

Submit completed form to:
Mendocino County Clerk of the Board
501 Low Gap Road, Room 1010
Ukiah, CA 95482
(707) 463-4221

Fee made out to :
County of Mendocino

Staff Use:
- ☐ Obtain Agenda for meeting/appeal verification *(distribute with appeal form to all parties listed below)*
- ☐ Appeal period verified and confirmed
- ☐ Appeal fee verified and confirmed
- ☐ Form distribution completed/Date Stamp form
- ☐ Copy of receipt and check attached to original appeal form and provided to DCOB
- ☐ Other _____

Distribute: Planning &Building Services (& Coast office, if applicable); District Supervisor; County Counsel; copy to BOS meeting-pending file (COB); Original to Planning Appeals Folder (DCOB); Note: If project is considered to be 'county-wide', copy to all BOS

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November 17, 2023

VIA PERSONAL DELIVERY

Clerk of the Board
Mendocino County Board of Supervisors
501 Low Gap Rd., Rm. 1010
Ukiah, CA 95482

Re: Appeal of Revocation of Boundary Line Adjustments
Case Nos.: B_2018-0068 & B_2019-0054
Appellants: William & Tona Moores

Dear Honorable Board of Supervisors:

I. Introduction

I represent William and Tona Moores in relation to the above referenced matter. The Moores respectfully ask this Board to vacate the Coastal Permit Administrator's unlawful decision to revoke two boundary line adjustments in Manchester, California. The County's unlawful revocation of these boundary line adjustments shockingly came over four years after those boundary line adjustments were approved. During that interval the Moores spent substantial sums in reliance upon the County's prior approvals and the adjustments cannot now be revocked.

The County of Mendocino approved two boundary line adjustments in the above referenced cases around June 13, 2019 and June 11, 2020 based upon the County's independent examination and due diligence. These boundary line adjustments were finalized around November 21, 2019 and August 18, 2020, respectively, to the benefit of my clients based upon the County's independent review. Based upon these boundary line adjustments, my clients then proceeded to invest substantial sums in reliance upon their vested rights afforded by the County. This reliance continued for over four years while the County remained silent following their approval of these applications.

Roughly four years and three months after the first of these two boundary line

adjustments were finalized, the County unlawfully revoked the boundary line adjustments without right in a muddled and improper proceeding before the Coastal Permit Administrator. The Moores now timely appeal to this Board and respectfully request this Board vacate the Coastal Permit Administrator's unlawful revocation. Not only was the Coastal Permit Administrator's revocation contrary to law, but it is an improvident use of resources for this County to spend its dollars and manhours on a war of choice—as contrasted from a war of necessity—that will only stifle economic development.

Should this Board affirm the Coastal Permit Administrator's unlawful revocation, the County would only be opting for expensive and unnecessary litigation that is properly avoided. Should the boundary line adjustments be revoked, the County would be engaging in a taking of private property. When a state actor—such as the County—takes private property it must proceed in a particularized manner required by law, which did not happen here. A condemning authority must also pay the affected private property owners both reasonable compensation and the property owner's attorney's fees incurred in obtaining such just compensation.

II. The County Lacks Both a Legal and a Factual Foundation for Any Revocation

The Coastal Permit Administrator relied upon Mendocino County Code section 20.536.035 as supposedly permitting the County to revoke the relevant boundary line adjustments based upon a supposed "fraud." This justification is both legally and factually defective.

Mendocino County Code section 20.536.035 does not authorize the revocation of any boundary line adjustments whatsoever. Section 20.536.035 is specifically cabined to—and only authorizes—the revocation of "coastal development permit[s]." Here, however, the approvals at issue are as to boundary line adjustments. Boundary line adjustments are governed by Mendocino County Code section 17-17.5, and nothing therein authorizes the revocation of a boundary line adjustment. Although the Mendocino County Code authorizes certain permits to be revoked, there is no authorization for the County to revoke a boundary line adjustment. This demonstrates that this Board understands how to craft such authorizing language, but has declined to authorize such actions in the case of boundary line adjustments. Under the Latin rule of statutory construction of *expressio unius est exclusio alterius*, when one or more things of a class are expressly mentioned others of the same class are excluded.

Even if the relied upon code section did hypothetically authorize the revocation of a boundary line adjustment (though it does not), there is an absence of

fraud to provide a factual predicate for any revocation. Fraud is narrowly defined as requiring the combination of (1) a knowingly false representation, (2) made with an intent to deceive, with justifiable reliance by the listener, and resulting damages. (*Engalla v. PermanenteMedical Group, Inc.* (1997) 15 Cal.4th 951, 974; *Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.) "[A] cause of action for misrepresentation requires an affirmative statement, not an implied assertion." *(RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089,1102.) An opinion cannot constitute a fraudulent statement. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 112.) Mere "opinions . . . are not a basis for relief on the ground of fraud." (*Agnew v. Foell* (1952) 113 Cal.App.2d 575, 577.*)* "The law is well established that actionable misrepresentations must pertain to past or existing *material facts*." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 (emphasis added).)

The elements of fraud are absent multiple times over.

The County has done nothing to show that Mr. Moores represented as a matter of affirmative material fact that the parcels were separate legal parcels. Even if such a statement had been shown to be made—though no showing has been made—any such representations would have been mere implied legal opinions. The question of whether two parcels are legally separate is a question of law, and the County cannot read any lay interpretation of what is or is not a parcel as anything more than mere lay opinion. The County has also failed to show that the Moores were aware of, recalled, and understood the precise statements, holdings, and effects thereof in the nearly twenty year old case of *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal.App.4th 883. The plain fact that the County—who was also a party to the action—did not itself recall and recognize any perceived relevance of the case is itself conclusive evidence that the Moores were equally unknowing of what an arcane legal opinion did or did not say. The Coastal Permit Administrator specifically applied a defective standard on this point by verbally stating that he could only make a finding of "constructive" knowledge—to use his word—which cannot support a finding of fraud. (*See Dennis v.* Burritt (1856) 6 Cal. 670, 673; *Stafford v. Lick* (1857) 7 Cal. 479, 482.)

Any specter of fraud is further separately and independently lacking because the County has done nothing to show any reasonable reliance upon any representations from the Moores. The County is staffed with an office of multiple attorneys, a multitude of planners who are versed in land use and real property law, and a legion of support staff. They are not in the habit—and should not be in the habit—of merely taking applicants at their word. Their job is to review the merits of applications. If applicants were merely to be given blind trust the department would be surplusage. The Coastal Permit Administrator completely failed to make any

finding whatsoever that the County had reasonably relied upon the Moores representations. Moreover, the very constructive notice determination that the Coastal Permit Administrator imposed upon the Moores cuts the County's argument of reasonable reliance off at the ankles. The County was at least as involved in *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal.App.4th 883 as were the Moores. Additionally, the County staff possess the specialized knowledge to understand and appreciate the significance of the decision in the way lay persons like the Moores do not.

In sum, there is no fraud, nor has there ever been any fraud. The boundary line adjustment cannot be revoked.

III. The Moores Have Relied Upon Their Vested Rights to Their Detriment

"When a governmental agency issues a valid grant of authority or other permit, it represents to the developer that he or she may proceed with the work of improvement with the blessing and approval of the government. When the developer thereafter expends money, performs work, and incurs liabilities in reliance on the government's representations, the government is estopped to apply any subsequent change in the law if the change would prevent the developer from completing the work of improvement as approved." (Miller & Starr, 7 Cal. Real Est. (4th Ed., Sept. 2023 Update), Ch. 21, § 21:26; *see also McCarthy v. California Tahoe Regional Planning Agency* (1982) 129 Cal.App.3d 222, 229-230.)

Roughly four years and three months before moving to revoke the Moores rights, the County gave the Moores an affirmative blessing that the Moores boundary line adjustment was proper. Based thereon, the Moores have expended significant time, money, and resources proceeding in reliance upon the County's approvals. A new groundwater well was drilled, roughly thirty thousand (30,000) gallons of water storage infrastructure have been installed upon the real property, de-brushing activities have been conducted in relation thereto, further permits have been obtained and paid for, and a litany of other regulatory and permitting activities relating thereto have consumed substantial time, money, and effort. Put another way, the Moores have likely spent at least six figures in reliance upon the County's affirmative approval of their boundary line adjustments. While the County went out of its way to plead ignorance at the Coastal Permit Administrator hearing as to what work had or had not been performed, the statements of the Moores were unequivocal. There was no question the Moores made financial expenditures in reliance upon the boundary line adjustments. County records alone can demonstrate at least twenty thousand dollars in general plan submissions alone, and it is undisputed that the Moores expended their funds on well development in reliance upon their vested rights.

The Moores possess vested rights, and the County cannot revoke these vested rights.

IV. Any Revocation of the Boundary Line Adjustments Would Constitute a Taking Without Just Compensation and Would Not Be Proceeding in a Manner Required by Law

Were the County to proceed with the proposed revocation, it would be affecting a taking of private property. The Fifth Amendment to the United States Constitution requires that "private property [shall not] be taken for public use, without just compensation." (U.S. Const., Amend. V.) Under the California Constitution, "[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Const., Art. I, § 19.) "Because the California Constitution requires compensation for damage as well as a taking, the California clause 'protects a somewhat broader range of property values' than does the corresponding federal provision." (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664, quoting *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 9.) "A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it." (*Knick v. Township of Scott, Pennsylvania* (2019) 139 S.Ct. 2162, 2167.)

The law is crystal clear and well settled that the deprivation of a vested right to develop is a taking. (*Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 783 [a valid "permit ripens into a vested property right which may not be taken from him against his will other than by proceedings in eminent domain with the payment of just compensation"]; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526-1527 [owner had a vested fundamental right to continue operating the tavern]; *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791 ["if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit"].)

Even assuming a rationally keyed public use can be cited that would make the condemnation permissible, (*cf. Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528), the County would also not be proceeding in a manner required by law because it would not be following the determination of necessity and pre-condemnation offer procedures required by California statute, (*e.g.,* Code Civ. Proc. § 1240.030 *et seq.* & Gov. Code § 7267.1 *et seq*).

Concluding this topic, the Moores would still be entitled to litigate the question of just compensation and would be entitled to not just their just compensation, but their "reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred." (Code Civ. Proc. § 1036.) Here, in light of the projects that the Moores would no longer be able to pursue due to such a taking, their diminution in value could be in the tens of millions of dollars, and they are likely to incur a million-plus dollars in attorney's fees for which the County will need to reimburse them.

V. The Coastal Permit Administrator Acted Improvidently

While the above has focused on legal arguments, the Board should also weigh functional considerations in reviewing this matter. The Moores are long time—and deeply rooted—property owners in the County. They only want to see this County grow and thrive. They want to bring a broad mix of housing, vacation homes, families, and tourists into the fold. They want to provide infrastructure such as added cell sites to this County. The south coast of this County is a wonderful place with public lands and beachfront horseback rides. The County should welcome and strive for growth in this area.

For over four years from the approval of their boundary line adjustments, the County did not have any issues with what the Moores were doing. It was only after over four years of the Moores striving in compliance with the County's approval of the boundary line adjustments that the County reached back in time a dusty appellate opinion that will soon be twenty years old to manufacture a problem and seek out a disagreement.

From a policy perspective, the County should be aiming to aid development. The County should not be going out of its way to stifle development. From a budgetary perspective, the County should be looking to increase its tax base and spend its revenues wisely. The County should not be going out of its way to render property less valuable by expending countless manhours from planning and county counsel.

The County gains nothing by picking this fight, but it is a fight that will come at a great—and unnecessary—cost. It will also be a losing fight for the County when the dust settles. The undersigned implores this Board to use our limited resources where they are actually needed and to put this matter to bed. The Moores want to bring money and growth to Mendocino's south coast and this should not be discouraged.

IV. Conclusion

For the reasons stated above, William and Tona Moores respectfully pray that this Board vacate the Coastal Permit Administrator's revocation in full.

Respectfully submitted,

Colin W. Morrow
Attorney for William & Tona Moores