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MEMORANDUM

DATE: APRIL 23, 2024

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, DIRECTOR

SUBJECT: APPEAL OF REVOCATION OF BOUNDARY LINE ADJUSTMENTS B_2018-0068 AND B_2019-0054 (MOORES)

BACKGROUND: A boundary line adjustment is defined by Mendocino County Code ("MCC") section 17-17.5 as the transfer of property by deed to a respective owner or owners of contiguous property for the purpose of adjusting a boundary line and not for the purpose of creating an additional lot or parcel. A boundary line adjustment within the Coastal Zone requires the approval of a coastal development permit pursuant to MCC section 20.532.015(E) in addition to compliance with the County's Division of Land Regulations (Title 17 of the MCC).

The matter before you refers to property as a legal parcel but also references assessor's parcel numbers (APNs). It is important to note that the description of property by APNs is solely for the purpose of tax assessment purposes and does not describe property for the purposes of ownership, sale, lease, or financing. While an APN may match the boundaries of a legal parcel, a legal parcel may also contain multiple APNs.

The Coastal Permit Administrator approved Boundary Line Adjustment B_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019. Please see page 38 of Attachment C for maps showing the property that was the subject of Boundary Line Adjustment B_2018-0068. The Coastal Permit Administrator approved Boundary Line Adjustment B_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61). Note that APN 132-210-61 is a renumbered APN that was involved in B_2018-0068; following a boundary line adjustment in Mendocino County, APNs are typically renumbered. The Boundary Line Adjustment was finalized on August 28, 2020. Please see page 67 of Attachment C for maps showing the property that was the subject of the B_2019-0054.

The applications for both above noted Boundary Line Adjustments were signed under the attestation that the Applicant and Owner signature on the form certifies "that the information submitted with this application is true and accurate". Both application forms for the above noted Boundary Line Adjustments were signed by William Moores. William and Tona Moores are the owners of all of the APNs listed above.

Subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP_2019-0006/R_2019-0008). This research located documents referencing both a previous Administrative Appeal (AA 2-2001, see Attachments D and E) and a court case between the property owner, William Moores, and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request.

Moores v. Board of Supervisors of Mendocino County (2004) 122 Cal. App. 4th 883 (*Moores*), involved an action by William Moores seeking to set aside the determination of the County that property then-identified as Assessor's Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County's merger ordinance. The case affirmed the determination of the County and confirmed that the referenced APNs had been merged by operation of law as of 1981. As such, the listed APNs are not separate legal parcels. See Attachment C for a copy of *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883.

The effect of the *Moores* case calls into question the approval of Boundary Line Adjustments B_2018-0068 and B_2019-0054. These boundary line adjustments both involved adjusting the boundaries of several of the above-referenced APNs. As a result of the Court's determination in *Moores,* there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law.

The applications for these boundary line adjustments asserted that these separate APNs were actually separate parcels and thus had boundaries that could be adjusted. However, given that Mr. Moores had full and complete awareness of the *Moores* case in which he was a petitioner, submitting applications that represented there were multiple legal parcels instead of a single parcel was a misrepresentation. The approvals of these boundary line adjustments was contrary to law as there were no separate legal boundaries to adjust.

Pursuant to Mendocino County Code section 20.536.035, the Coastal Permit Administrator revoked Boundary Line Adjustments B_2018-0068 and B_2019-0054 on November 9, 2023. The Coastal Permit Administrator determined that Boundary Line Adjustments B_2018-0068 and B_2019-0054 were obtained by fraud. Findings of Fact were adopted for the project by the Coastal Permit Administrator and are attached to the Coastal Permit Administrator Action Sheet (Attachment B).

THE APPEAL: On November 17, 2023, Colin W. Morrow, on behalf of clients William and Tona Moores (the "Appellants"), filed an appeal of the Coastal Permit Administrator's revocation of Boundary Line Adjustments B_2018-0068 and B_2019-0054 (the "Appeal"). See copy of filed Appeal in Attachment A.

DISCUSSION:

Arguments for Revocation

Pursuant to MCC section 20.536.035, there are four grounds for revocation or modification of a coastal development permit:

(1) That such permit was obtained or extended by fraud.
(2) That one (1) or more of the conditions upon which such permit was granted have been violated.
(3) That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.
(4) A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operations of one (1) or more such conditions.

Revocation proceedings were commenced against the Appellants pursuant to paragraph (1) above, which will be discussed further below. The appeal of the Coastal Permit Administrator's decision is heard by the Board of Supervisors *de novo*, as the Board may affirm reverse, or modify the determination as it finds in compliance with the Coastal Zoning Code and the Coastal Element of the General Plan. MCC section 20.544.015.

After further review of this matter, in addition to revocation of the permit as being obtained or extended by fraud, staff also believes that the prior approvals are void ab initio, as there was never a proper legal basis to approve the subject coastal boundary line adjustments.

B_2018-0068 and B_2019-0054 Are Void

These prior approvals of the County are void in that they are contrary to applicable law. This is because in 2018 and 2019, Appellants applied for lot line adjustments, also known as boundary line adjustments, of property that had already been adjudicated to be one single lot. A lot line adjustment cannot result in more lots than existed prior to the adjustment. MCC section 17-17.5; Government Code section 66412(d). As such, no action by the County in response to these applications could have legally resulted in more lots than actually existed.

The *Moores* case, decided in 2004, specifically determined that certain property owned by Appellants, then identified as APNs 132-210-37, -38, -39, -40 and -41 were actually a single legal parcel, having been merged pursuant to the County's merger ordinance (Mendocino County Code section 17-106), as of 1981. As such, the component APNs are actually one single legal parcel. Because legal parcels are different than an APN, the result of this case did not necessarily require the abolition of the APNs that existed within the boundary of the single legal parcel.

The effect of a court judgment is quite clear and the Court's determination is conclusive. See Code Civ. Proc. § 1908. It is also well settled that a judgment or decree necessarily affirming the existence of any fact is conclusive upon the parties to an action whenever the existence of that fact is again in issue between them, not only when the subject matter is the same but also when the point comes incidentally in question in relation to a different matter in the same or any other court. *People v. Gorman* (1945) 69 Cal.App.2d 54, 58-59. As such, the *Moores* case conclusively determined as between the Appellants and the County that the property at issue in that case was a single legal parcel.

In 2018, fourteen years after the decision in *Moores*, Appellants filed the application for Boundary Line Adjustment B_2018-0068, a coastal boundary line adjustment regarding APNs known at the time as 132-210-40 and 132-210-41. These are two of the APN's dealt with in *Moores* as being part of a single legal parcel. Because these APNs had been conclusively determined to not be separate legal parcels but merely portions of a single larger legal parcel, there was no legal parcel line boundary to adjust.

Similarly, in 2019, the application for Boundary Line Adjustment B_2019-0054 sought to reconfigure the boundaries between then-APNs 132-210-37, 132-210-38, 132-210-39 (all three of which were named in *Moores* and determined to be part of the same legal parcel) and 132-210-61 (which was one of the parcels/APNs that "resulted" from B_2018-0068). None of the APNs at issue in B_2019-0054 actually existed as a separate legal parcel, given the *Moores* decision.

In applying for both of the above coastal boundary line adjustments, Appellants sought to shift boundaries between what they represented as being legal parcels. But as determined by *Moores*, there were no boundaries to shift. Pursuant to the Subdivision Map Act and the County's own codes on boundary line adjustments, any approval of either application could not have had the legal effect of creating a boundary line, as a boundary line adjustment cannot create more parcels than previously existed. As stated above, it is important to remember that assessor parcel numbers and boundaries are merely for the convenience of the Assessor and have no legal effect beyond that.

Both of the approved coastal boundary line adjustments are *void ab initio*, meaning they were void from the very beginning. As a matter of law there is only one legal parcel that includes all of the subject APNs and thus no interior legal parcel boundaries that could be adjusted by any action of the County. Further, the approval of the applications could not have had the effect of shifting a parcel line that did not exist and the approval of the County could not have created a boundary line as that would be contrary to the Subdivision Map Act. Revocation or setting aside of these past approvals is appropriate.

Issues Raised on Appeal

Appellants raise the following arguments in appealing the CPA's action to revoke the coastal boundary line adjustments that were previously granted.

1. ***The County Lacks Both a Legal and a Factual Foundation for Any Revocation***
   Appellants first argue that there is no ability for the County to revoke the granted coastal boundary line adjustments, as the revocation procedure in MCC section 20.536.035 only speaks to the revocation of a

coastal development permit. Boundary Line Adjustments that are located within the Coastal Zone of Mendocino County are subject to obtainment of a Coastal Development Permit in addition to the standard review procedures and requirements under Mendocino County Code Section 17-17.5.

Lands, such as the subject parcels, that are located within the Coastal Zone and outside the Town of Mendocino are subject to Division II of Title 20 of the MCC. Pursuant to MCC section 20.532.010 any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) "a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use" (emphasis added). Coastal Boundary Line Adjustments are not given a separate application type or number but are processed under the boundary line adjustment application number assigned at the time of application. As such, the revocation procedures for a coastal development permit apply to a coastal development permit issued for a boundary line adjustment in the coastal zone. The coastal boundary line adjustments at issue in this appeal were originally granted upon the Coastal Permit Administrator making the findings required by MCC Chapter 20.532 and referred to the ability for the approvals to be appealed pursuant MCC Chapter 20.544.

The property owners obtained a Coastal Development Permit and Boundary Line Adjustment for B_2018-0068 on June 13, 2019 and for B_2019-0054 on June 11, 2020. Included in the materials provided with this agenda packet are the Coastal Permit Administrator's approvals of these prior applications (contained in Attachment C). Under MCC section 20.536.035 a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud.

Appellants assert that a particular definition of fraud, that for a tort action for deceit, applies to the case at hand. However, none of the cases cited to by Appellants involve any fraud or misrepresentation to a governmental entity, and Appellant has not shown that the standards for fraud in a court action would necessarily apply in the context of the revocation of a use permit. There are other definitions of fraud in California law. Civil Code section 1572 defines actual fraud in the context of contracts as including "the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true." The assertions of the Appellants on the boundary line adjustment applications would seem to fit this definition. However, revocation of building permits has been supported based on misrepresentations to a governmental entity, with the key factor being that the misrepresentation was made. *Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348. The standard for a discretionary governmental approval should be no different.

In regards to the issue of fraud, Appellants assert that they has never "represented as a matter of affirmative material fact that the parcels were separate legal parcels." The application forms, contained in Attachment B to this memorandum, submitted for both B_2018-0068 and B_2019-0054 were signed under an attestation on the bottom of page one of both applications, that the Applicant and Owner signature on the form certifies "that the information submitted with this application is true and accurate". Mr. Moores signed both applications. The maps supplied by the Appellant as part of the application (pages 10 through 22 of Attachment B respectively) call out the "Subject Parcels" and show how the parcels will changed from the "Existing Parcel Configuration" to the "Proposed Parcel Configuration." Since the submitted applications were for boundary line adjustments, which can only occur between separate legal parcels, the Appellants were certifying that the parcels included in the adjustment request were in fact separate legal parcels. The certification is not that the applicant has an opinion that there are parcels that can be adjusted, but that parcels exist and have boundaries that can be adjusted. The misrepresentation was specifically that multiple parcels existed, which is clearly a fact that is material to a boundary line adjustment.

Appellants also argue that the existence of *Moores* does not show that Appellants had any awareness or recollection of this case or its holding. This is simply not credible. The administrative record for *Moores* includes the Appellants appeal of a County determination to the Planning Commission, which denied the appeal. The Appellants then appealed the Planning Commission determination to the Board of

Supervisors, which also denied the appeal. The Appellants then filed a petition for administrative writ of mandate challenging the Board of Supervisors' decision in the Mendocino County Superior Court, which was denied by the Superior Court. Appellants then appealed that decision to the Appellate Court, which also ruled against the Appellants, in a published decision. The *Moores* decision notes that the dispute began in 1996; the *Moores* decision was final in 2004. The time and likely cost of this appeal process is significant, and it simply is not credible to believe that Appellants were not aware of, did not recall or did not understand the impact of the case.

In addition to the Appellants lack of credibility is that the Appellants recollection of the *Moores* decision is legally irrelevant. As discussed above, *Moores* is a conclusive determination that the APNs at issue in this case are a single legal parcel and Appellants are barred from arguing to the contrary by virtue of that decision. Even if Appellants had simply forgotten about their eight-year legal dispute with the County, the decision of *Moores* is binding.

Appellants also argue that the County's involvement in *Moores* and not raising the case when the boundary line adjustments were applied for means that the County cannot do so now. However, the mere fact that municipal officials fail for a long time to enforce a zoning ordinance against a violator does not estop the municipality to enforce it against him or her subsequently (*Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386) nor does the fact that the officials have failed to enforce an enactment against other violators prevent them from enforcing it in a particular case. *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442; *Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386, 199 P.2d 51 (2d Dist. 1948).

An administrative officer, such as a city building inspector, cannot by his or her conduct estop the legislative body of the city to adopt and enforce an ordinance. *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442; *Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386. Likewise, the doctrine of equitable estoppel is not invoked as a matter of law where a property owner relies on a permit issued by the public entity but the permit violates a zoning ordinance. *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal. App. 4th 249. Thus, the fact that a building permit was granted does not authorize the maintenance of a prohibited structure in a restricted district. *Weiner v. City of Los Angeles* (1968) 68 Cal. 2d 697; *Pettitt v. City of Fresno* (1973) 34 Cal. App. 3d 813.

In this case, the coastal boundary line adjustments were issued by staff of the Department of Planning and Building Services in error and without reference to *Moores*. This does not estop the County from revoking or nullifying the coastal boundary line adjustments that should never have been authorized in the first place.

Appellants applied for boundary line adjustments signing certifications that the information in the applications was true and correct. These applications contained maps seeking to adjust parcel boundaries. However, Appellants were the named parties in a lawsuit against the County that had specifically determined that the APNs on the maps in the applications were a single, legal parcel, and thus had no boundaries to adjust. It is not credible that they simply forgot this case and from a legal perspective cannot reasonably argue this point in a court of law. Moreover, the County cannot be estopped from taking action to revoke the coastal boundary line adjustments at this time because the previously granted adjustments could not legally have been applied for or made. As such, the permit may be revoked pursuant to MCC section 20.536.035(A)(1), as having been obtained or extended by fraud.

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

First, an invalid permit vests no rights, even if expenditures have been incurred in good faith reliance on the permit. *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813. In addition, there is no vested right when an agency is misled into issuing a permit by a developer. *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348.

The authority cited by Appellants does not apply in this situation. It is true that when a developer expends money, performs work and incurs liabilities in reliance on a governmental permit or decision, the government is generally estopped from applying a subsequent change in the law if the change would

prevent the developer from completing the work of improvement as approved. This is most demonstrable in the context of a building permit – if a building permit is issued, and the permittee begins work on the building, the agency cannot later impose new or additional code requirements. However, even assuming that the boundary line adjustments were proper, Appellants have not shown that the work or improvement on the property was done in reliance or dependence upon the boundary line adjustment. The boundary line adjustment itself is not an approval for any development. Appellants appear to believe that the work they have generally described required multiple parcels or adjusted boundary lines.

Appellants various activities it claims were performed in reliance on the boundary line adjustments. These include (1) the drilling of a groundwater well, (2) installation of 30,000 gallons of water infrastructure, (3) de-brushing activities conducted in relation to the installation of water infrastructure, (4) "further permits have been obtained and paid for", and (5) "a litany of other regulatory and permitting activities related thereto."

The improvements listed in the Appeal as completed by the Appellants in reliance of the prior approvals have no bearing on whether the property in question is one legal parcel or multiple legal parcels, or the adjustment of any boundary lines. Regarding water wells, it is common in Mendocino County for a parcel to have multiple wells to support existing or proposed development, particularly if that site is to be developed with a visitor serving facility as indicated by the General Plan Amendment and Rezoning request currently on-file with the Department. Multiple parcels are not required to drill multiple wells. As to the thousands of dollars spent in General Plan Amendment applications, staff will note that the first filed General Plan Amendment application was filed in 2006 roughly 12 years prior to the first Boundary Line Adjustment application and was acted upon in March 2019. The currently submitted General Plan Amendment application was filed in September 2019 and has not yet been acted upon pending resolution of this legal parcel issue. Appellants also cite to no provision of law stating that the mere act of filing applications would create any vested rights.

Staff is concerned about the noted 30,000-gallons of water storage in numerous tank(s), as we were unable to locate a record of a permit for that improvement and any improvement such as this would require the issuance of both a Coastal Development Permit and likely also a building permit. Exemptions from a Coastal Development Permit would not apply as there is no existing residential development on the property for the water storage tanks to be accessory to. "De-brushing activities" were not clearly defined in the prior Comment Letters or the Appeal other than seeming to indicate it may relate to the possibly unpermitted water storage tank and permitted wells. Staff notes that major vegetation removal or harvesting of a certain magnitude would also require review and approval by the Department. Staff cannot speak to the unspecified "litany of other regulatory and permitting activities".

Under existing case law, an invalid permit vests no rights. Even so, none of the types of development alleged by Appellants would appear to require multiple parcels or rely on the approval by the County of a shift in parcel boundaries. As such, Appellants do not appear to have undertaken any development or work in reliance on the boundary line adjustments that would create any vested right.

3. 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

The Appeal alleges that the revocation of the Boundary Line Adjustments would constitute a taking of private property. While much case law is cited, there are minimal statements regarding what exactly is being taken by the County. It appears that Appellants believe they have vested rights that the County would deprive them of as a result of the revocation. As discussed above, it is not clear that the improvements installed by Appellants require multiple parcels or even performed after obtaining the requisite permits from the County.

Appellants go further and appear to assert that the County must follow the provisions of the Eminent Domain Law for this proceeding. On the contrary, the provisions of the Eminent Domain Law apply when the public authority commences the litigation to acquire property. The County is not here attempting to acquire any property or property rights of the Appellant, only negate or revoke approvals that should never have been approved in the first place, and to which Appellant has no right. Appellants cite to no case law requiring the County to undertake the process of the Eminent Domain Law for a revocation

action.

Lastly, it is not clearly stated how revocation of boundary line adjustments would constitute either a physical or regulatory taking. Staff does note that the Appellants would retain ownership of the land.

In summary, Appellants have no legal basis to assert that there were or are multiple legal parcels, and no approval of a boundary line adjustment could have created multiple parcels. Both boundary line adjustments were void at the time they were approved and, given the existence of the *Moores* decision, the applications for both boundary line adjustments contained fraudulent statements that multiple parcels existed. Both boundary line adjustments should be revoked by the County.

RECOMMENDED ACTION: Adopt a resolution denying the appeal and upholding the Coastal Permit Administrator's decision to revoke Boundary Line Adjustments B_2018-0068 and B_2019-0054, located near the community of Irish Beach and currently known as APNs: 132-210-61, 132-210-62, 132-210-63 and 132-210-64, and further finding that the Boundary Line Adjustments are void ab initio; and authorize Chair to sign same.

ATTACHMENTS:

A. November 17, 2023 Appeal
B. November 9, 2023 Coastal Permit Administrator Packet
C. September 14, 2023 Coastal Permit Administrator Packet
D. Administrative Appeal 2-2001 Board Action and Minutes
E. Administrative Appeal 2-2001 Planning Commission Minutes and Staff Memo including Maps