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VIA EMAIL

Mendocino County Clerk of the Board
Mendocino County Board of Supervisors
501 Low Gap Rd., Rm. 1010
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(bos@mendocinocounty.org)

Re: Date: September 14, 2021
Agenda Item: 5(d)
Topic: William Schieve's Appeal of the Coastal Permit Administrator's April 8, 2021 Decision Approving Boundary Line Adjustment Application No. B 2017-0043

Honorable Members of the Board of Supervisors and the Clerk of the Board:

As you may be aware, I represent William Schieve. Mr. Schieve filed the subject appeal. The subject appeal seeks to oppose the creation of an eleven lot major subdivision on Nameless Lane in rural Cleone. The applicant is presently using a boundary line adjustment to move the proposed subdivision outside of the coastal zone so that it can evade the coast development permit process.

I have had a chance to review County Counsel's memorandum in relation to Agenda Item 5(d) on the September 14, 2021, Board of Supervisors' agenda. The memorandum wholly overlooks two important separate and independent points. It also provides too narrow a description of impermissible piecemealing under the California Environmental Quality Act.

First, this Board has full authority and power to stop a deeply unpopular project from moving forward at this present stage. The proposed development in Nameless Lane—which is advanced by both the current boundary line adjustment (B-2017-0043) and intimately related subdivision application (S-2017-0003)—is deeply unpopular among your constituents currently living in the relevant community. They are alarmed by what they see as a poorly planned and improvident project in an environmentally sensitive area with a history of toxic contamination from a car crushing and burying operation. There are already both allegations and findings that the developer has flouted land use regulations with respect to the real property including

allegations of impermissible timber harvesting and findings that an unpermitted septic system has been installed on the real property.

The Mendocino County Code makes clear that this Board has the power to nip this ill-conceived project in the bud: “The Board of Supervisors, after considering the notice and Planning and Building Services Department report may remand, affirm, reverse or modify any such decision, determination or requirement as it finds in compliance with this Division and the Coastal Element of the General Plan.” (Mendocino County Code sec. 20.544.015.)

The Board of Supervisors received at least nine pieces of correspondence from Cleone residents strongly opposed to the project when this matter came before this Board on July 20, 2021. The Board has the discretion to respond to this full-throated opposition by fully reversing the decision of Coastal Permit Administrator and denying the boundary line adjustment. The discretion is there to do so. Moreover, there is adequate foundation for such discretion. For example, the Board could deny the boundary line adjustment as inconsistent with Mendocino County’s General Plan.

Mendocino County’s General Plan contemplates that part of the coastal element is “[t]o preserve and maintain the character of the rural atmosphere and visual quality of” villages such as Cleone and other nearby communities. (General Plan, Coastal Element, Chapter 2.2, Rural Village Land Use Classification.) The “principal permitted use” for parcels in rural coastal villages such as Cleone is “[o]ne dwelling unit per *existing* parcel and associated utilities and light agriculture.” (*Ibid.* (emphasis added).) Expanded traffic pressure from a subdivision enabled by the boundary line adjustment may also run contrary to the Mendocino County General Plan’s specific acknowledgement of Public Resources Code section 30254’s requirement that “in rural areas of the coastal zone [Highway 1] remain a scenic two-lane road.” (General Plan, Coastal Element, Chapter 3.8, Transportation, Utilities and Public Services.)

Second, County Counsel’s memorandum simply accepts that boundary line adjustments are per se categorically exempt from CEQA. This is false. Even where a CEQA exemption applies, there are also exceptions to the exemptions and the respondent, defendant, or real party in interest in any judicial proceeding that challenges an act will need to defend not just the exemption but all implied findings that the exceptions to the exemptions do not apply. (See Cal. Code Regs., tit. 14, § 15300.2; Miller and Starr, 8 Cal. Real Est. (4th Ed., Nov. 2020 Update) § 26:9.)

At least three exceptions to any CEQA exemptions are plainly present here: Location, cumulative impacts, and the presence of hazardous waste. (Cal. Code Regs., tit. 14, § 15300.2, subdivisions (a, b, & e).)

As to location, the County itself admits the project to be hydrologically connected to the Inglenook Fen watershed via an onsite wetland. The County itself explains that the Inglenook Fen is a Resource Area as designated by the California Natural Areas Coordinating Council and acknowledges that future development should be conditioned to establish buffer areas so that

development does not encroach upon the wetland. The County itself also notes soils conducive to sensitive Bishop Pine forest and that Bishop Pines were noted on the site in question.

As to cumulative impacts, this dovetails with the discussion of piecemealing below. Traffic will increase, additional vehicle miles driven by residents of new development will have greenhouse gas implications, the local water table that feeds neighbors' groundwater wells will be impacted, soil will be disturbed, flora and fauna will be impacted. The list goes on.

As to hazardous waste, there are unaddressed hazardous waste concerns in relation to the subject real property. In September 2010, the Mendocino County Air Quality Management District ("MCEHD") collected a soil sample at the subject real property that contained high diesel and motor oil concentrations. In December 2010, MCEHD issued an unauthorized release report for unpermitted activities involving crushing using heavy equipment of vehicles and appliances for metal scraping. This matter is still open and unremediated. In February 2021 petroleum/hydrocarbon products were still present in the soil. Neighbors report a history of vehicle crushing operations on the subject real property, and such vehicles could have contained a multitude of contaminants.

"[A] finding of categorical exemption cannot be sustained if there is a 'fair argument' based on substantial evidence that the project will have significant environmental impacts, even where the agency is presented with substantial evidence to the contrary." (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 262, fn. 12 quoting *Fairbank v. City of Mill Valley* (1999) 75 Cal. App. 4th 1243.) "This unusual 'fair argument' standard of review over a public agency's decision has been characterized as setting a 'low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.'" (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 370 quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316–1317.)

Finally, as a third topic, County Counsel's description of piecemealing as only arising when "the initial project practically compels completion of future phases" is overly narrow. "Courts have considered separate activities as one CEQA project and required them to be reviewed together where, for example, the second activity is a reasonably foreseeable consequence of the first activity . . . ; the second activity is a future expansion of the first activity that will change the scope of the first activity's impacts . . . ; or both activities are integral parts of the same project . . ." (*Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 45–46 quoting *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 698.) Here, the subdivision is absolutely a "reasonably foreseeable consequence of the first activity." The subdivision is already premised on the approval of the boundary line adjustment to escape the coastal development permit process. A review of the applicant's own subdivision application expressly states "concurrently with the processing of this subdivision, owner is processing a Coastal Boundary Line adjustment to create base parcels lying in the Coastal zone and inland zone (subdivision base parcel) recognizing that the Subdivision approval will be conditioned

upon completion of the Boundary Line Adjustment.” (“Subdivision Application S-2017-0003, Sheet “A”, No. 20.) The subdivision going forward is not just reasonably foreseeable, but it has already been submitted. The gears are both enmeshed and turning. This reality further dictates that the lack of environmental review is piecemealing under the “both activities are integral parts of the same project” test identified above. Both the boundary line adjustment and already submitted subdivision application are integral parts of an effort to create eleven lots wholly outside the coastal zone and to elude the more stringent review that would be required if any of those lots were to even straddle the coastal zone.

In summation, the residents of at least Nameless Lane—if not all Cleone generally—are wholly opposed to the presently proposed large development. The boundary line adjustment in question is a foundational step in this project that is imminently intertwined with the advancement of the subdivision by taking the development out of the coastal development permit process.

On the one hand, the Board of Supervisors absolutely has the discretion to deny the boundary line adjustment and allay their constituents concerns about unwise development. On the other hand, it would likely be error for this Board to let this project escape any environmental review at this stage and let it pass through as submitted. Cleone resident William Schieve respectfully submits that this should make the Board’s choice simple.

Respectfully submitted,



Colin Morrow
Attorney for Dr. William Schieve

CC: Client