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MEMORANDUM

DATE: JULY 20, 2021
TO: HONORABLE BOARD OF SUPERVISORS
FROM: MARK CLISER, PLANNER II, PLANNING AND BUILDING SERVICES
SUBJECT: APPEAL OF COASTAL PERMIT ADMINISTRATOR APPROVAL OF BOUNDARY LINE ADJUSTMENT B_2017-0043

On April 16, 2021, Attorney Colin Morrow, on behalf of Dr. William Schieve, filed an appeal of the decision by the Coastal Permit Administrator's approval of Boundary Line Adjustment application B_2017-0043. The application requests a Boundary Line Adjustment between APNs 069-320-01 (Lot "A") and 069-320-02 (Lot "B") in order to align parcel boundaries with Coastal Zone Boundary and remove split designations. The project is located 4± miles north of the City of Fort Bragg. The subject parcels are approximately 700 feet east of the intersection of State Route 1 (SR-1) and Nameless Ln. (Private) within unincorporated Mendocino County. The properties are currently addressed at 32800 (Lot "A") & 32700 (Lot "B") Nameless Lane, Fort Bragg.

Lot "A", which is primarily located inland, will increase in size from approximately 10.8 acres to approximately 11.3 acres. This increase will occur in the southeast corner of Lot A, along Nameless Lane. Due to zoning and corridor setback requirements, the amount of increased buildable area is minimal. Lot "B", which is primarily located in the coastal zone, will decrease from approximately 10.8 acres to 10.3 acres. This decrease will occur in the northwest corner of Lot "B". Because of setback requirements to the adjacent parcels, the amount of decreased buildable area is minimal. (Attachment C, Page 7 – Tentative Map).

The boundary line adjustment was heard by the Coastal Permit Administrator as a coastal development standard permit pursuant to Mendocino County Code section 20.532.015(D), as portions of both existing parcels are within the Coastal Zone.

The sole basis for the appeal, pursuant to Mr. Morrow's letter dated April 16, 2021, is that the boundary line adjustment would result in the creation of additional lots or parcels as those terms are defined by the Subdivision Map Act (Government Code section 66000 *et seq.*). Government Code section 66412, subdivision (d), provides that a boundary line adjustment cannot create a greater number of parcels than originally existed.

Pursuant to Mendocino County Code section 20.544.015, in reviewing this appeal 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. The Board of Supervisors shall adopt findings which specify the facts relied upon in deciding the appeal, and the findings shall state the reasons for any conditions imposed. The decision of the Board of Supervisors is final unless the decision is appealed to the California Coastal Commission.

BOUNDARY LINE ADJUSTMENT REQUIREMENTS

Government Code section 66424 of the Subdivision Map Act defines "subdivision," in relevant part, as

follows:

the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future.

The Subdivision Map Act includes certain specific exemptions from the various requirements of the Act, including for boundary line, or lot line, adjustments. Government Code section 66412, subdivision (d), reads as follows:

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

Mendocino County Division of Land Regulations – Chapter 17 – contains the County's procedure for boundary line adjustments. Section 17-17.5 defines a boundary line adjustment 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.” In order for a transfer of property to be treated as a boundary line adjustment rather than as a division of land, the Applicant shall submit a tentative map that is clearly marked “Boundary Line Adjustment” (Attachment B – Tentative Map). The tentative map shall be reviewed by the Subdivision Committee subject to whatever conditions it deems reasonable and that conform to Government Code Section 66412, subdivision (d), including requirements to insure that the adjustment shall not have the effect of creating a new parcel.

The central point of the appeal is that the boundary line adjustment cannot be granted because, due to the existence of deeds of trust on both properties involved, the adjustment will necessarily create two additional parcels. Based on the following analysis staff does not believe this is the necessary conclusion and recommends denial of the appeal, but modifying the determination of the Coastal Permit Administrator to include specific direction regarding the processing of the boundary line adjustment.

The appeal refers to the definition of “subdivision” and an Attorney General's Opinion regarding the same. The definition of “subdivision” does include “the division ... for the purpose of sale, lease or financing.” The cited opinion does conclude that the act of creating several deeds of trust upon different portions of a parcel constitute a subdivision. However, the opinion is concerned with the *placement* of deeds of trust on different portions of a parcel, in order to have the effect of creating separate portions of property for financing or sale without regard to the land use planning requirements of the Subdivision Map Act and local regulations. At issue here are two properties with *existing* deeds of trust and no apparent plan to create new financing in an attempt to create new developable “lots” without compliance with the Subdivision Map Act.

The appeal takes the position that processing of the boundary line adjustment will necessarily result in a conflict between the property descriptions attached to the two deeds of trust and the updated property descriptions following the adjustment. This position does not take into account that property descriptions

of a deed of trust can be modified and/or partially reconveyed to reflect the updated boundaries.

Government Code section 66412(d) may provide only limited ways to review and condition the approval of a boundary line adjustment, but the overarching requirement of a boundary line adjustment remains the same: a greater number of parcels than originally existed cannot be created. Mendocino County Code section 17-17.5, paragraph (H) acknowledges this limitation and provides that the County may attach requirements to “insure that the adjustment shall not have the effect of creating a new parcel.” While it is entirely appropriate for an applicant to seek a modification of a deed of trust with a lender concurrently with the boundary line adjustment, it is also entirely reasonable for the County to require any modification of a deed of trust prior to finalizing a boundary line adjustment, in order to insure that the adjustment could not have the effect of creating a new parcel.

The County’s existing procedure for processing boundary line adjustments includes the County’s review, after the approval of the application, of the deeds and the legal descriptions to confirm that they conform to the County’s approval. It is clearly within the scope of the County’s authority to require that this process additionally require the applicant to prepare partial reconveyances and/or modified deeds of trust in substantial compliance with the boundary line adjustment and require the recording of the same concurrent with the documents that effectuate the boundary line adjustment. This procedure eliminates the potential creation of new parcels as hypothesized by the appeal.

In addition to the County’s typical boundary line adjustment process, boundary line adjustments in the Coastal Zone are heard by the Coastal Permit Administrator as a coastal development standard permit pursuant to Mendocino County Code section 20.532.015(D), as portions of both existing parcels are within the Coastal Zone.. The purpose of the Coastal Permit Administrator review is “to insure that proposed development will protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.” All Coastal Development Permits are subject to the required findings in MCC Section 20.532.095, and the Coastal Permit Administrator may also subject the project to conditions it deems reasonable.

Mendocino County Code Section 20.524.025(E) states “A land division or boundary line adjustment shall not result in a parcel having more than one (1) zoning district designation, not including combining district designation(s), if such designation would adversely affect environmental resources or agricultural use of the property.” Boundary line adjustment B_2017-0043 will remove multiple zoning designations from both Lots, placing the entirety of Lot “A” within the Inland Zoning District and the entirety of Lot “B” within the Coastal Zone.

In addition, Boundary Line Adjustment B_2017-0043 removes the split of the parcels by the Coastal Zone boundary allowing for each lot to be subject to only one Division of the County Zoning Code rather than being subject to different Divisions of the County Zoning Code depending on where on the parcel future development is proposed. The Coastal Zone boundary is treated as a de facto parcel line for the purposes of determining setbacks, lot cover and other development regulations and causes a hindrance to future development of either parcel that is subject to the Boundary Line Adjustment. MCC Section 20.304.045(D) states that:

(D) Where a parcel is bisected by a Commercial/Residential or Rural Village/Residential zoning district boundary and or the Coastal Zone Boundary, the regulations of each district shall apply separately to that portion of the parcel lying in either district, and

(1) It shall not be construed that the provisions or requirements of either district apply to the entire parcel.

(2) The district boundary shall be considered a de facto parcel line for the purposes of determining setbacks, lot coverage and other development regulations of this division.

CHRONOLOGY: SUBDIVISION COMMITTEE AND COASTAL PERMIT ADMINISTRATOR ACTIONS

The application for the Boundary Line Adjustment was submitted on June 30, 2017 in conjunction with Subdivision application S_2017-0003. The intent was to process both projects simultaneously. On July 28, 2017 an incomplete letter was sent to the applicant stating several items, including a Botanical / Wildlife Survey, were required to deem the application complete. With no response from the Applicant the incomplete letter was again sent on October 30, 2017.

On December 11, 2017 Staff sent referral packets to responsible agencies for comments. Sonoma Mendocino Coast District Department of Parks and Recreation provided comments which included a request for a biological survey addressing wetlands and any potential impacts to Environmentally Sensitive Habitat Areas (ESHA). Upon submittal of the biological survey by the applicant, Staff re-referred the project to responsible agencies on June 17, 2019.

On March 3, 2019, Code Enforcement logged a complaint for the subject parcel regarding possible illegal vegetation removal followed by a second complaint on August 7, 2019 for possible unpermitted tree clearing. On February 24, 2020, Staff received letters of concern from the public regarding possible hazardous waste dumping on the subject parcel. Staff then requested a revised application to address these concerns. The revised material requested included:

1. An "Accompanying Statement" which addresses all applicable aspects required by Mendocino County Code Section 17.41(C)
2. A revised and newly dated tentative map
3. A preliminary Title Report noting the change in ownership
4. A feasibility report indicating the quantity and quality of water available at the proposed source
5. A Soils Report
6. A revised State Fire Safe Regulations Application
7. Demonstration that removal of any trees was lawful
8. A Hazardous Material Incident report demonstrating the hazardous waste dumping was remediated
9. A revised Biological Study / Botanical report

Due to the complicated nature of the Subdivision, the Applicant chose to separate the projects and bring the Boundary Line Adjustment to hearing first.

Staff visited the project site on December 4, 2020 with CDFW and noted that the eastern portion of Lot "B" (coastal lot) is hydrologically connected to the Inglenook Fen watershed. As such, any future development on Lot "B" would be required to establish buffer areas around the fen. This is reflected in Condition 8 of the attached Staff Report which states, "A note shall be placed on the deeds and/or legal descriptions stating that, 'Future development may require additional studies and/or may be subject to restrictions' and 'Future development shall be in conformance with the criteria for development within Environmentally Sensitive Habitat Areas (MCC Chapter 20.496) and Visual Resource and Special Treatment Areas (MCC Chapter 20.504) as set forth in the Coastal Plan and Coastal Zoning Code.'" Comments from CCC also noted the fen on Lot "B" and were in support of CDFW's request for future studies and restrictions as part of any future subdivision or subsequent development subject to discretionary review.

Upon review of public comments, Staff sent a memorandum to the Coastal Permit Administrator on April 7, 2021 with revised findings, clarifying the project is only for a lot line adjustment and does not include or involve any development (Attachment H – Memorandum to CPA). Staff addressed public concerns both from individuals as well as from the Concerned Neighbors of the Cleone Community and noted the concerns are more focused on any future subdivision or development and are not part of the Boundary Line Adjustment. However, the concerns are warranted and will be addressed in any future subdivision or subsequent development.

The project was heard on April 8, 2021 at Subdivision Committee where it was approved with standard

conditions and an additional condition stating existing septic systems on Lot "A" shall be brought into compliance to the satisfaction of the Department of Environmental Health. Later that same day the project was then heard by the Coastal Permit Administrator. At the hearing Staff addressed how Boundary Line Adjustment B_2017-0043 conforms to County plans.

- Mendocino County Coastal Element Policy 3.1-32 states boundary line adjustments will not be permitted if any parcel created as a result will be entirely within an ESHA, or any parcel being created does not have an adequate building site which would allow for development. The project will not create either scenario
- The project is not in an area where natural grade exceeds 30 percent slope. As such, the project is in conformance with coastal element policy 3.8-7 which addresses sewage disposal systems
- The project is not in a highly scenic area or tree removal area, per policy 3.5-3
- The project will not result in a change in density as it does not provide for divisions beyond that which currently exist
- The project will not result in a parcel having more than one zoning designation
- The project will not create any new parcels
- No substandard parcels will result from the adjustment as both parcels are currently above-standard in size and consistent with their zoning designations
- The project is not located on property containing pygmy vegetation or soils capable of producing pygmy vegetation
- No impacts to any riparian areas will be incurred as a result of this Boundary Line Adjustment, nor will it significantly degrade or destroy the habitat for any endangered plant and animal species

Staff also determined that the project is categorically exempt from the California Environmental Quality Act per Section 15305, Class 5(a), which exempts projects that do not result in any changes in land use or density, including minor lot line adjustments not resulting in the creation of any new parcels. Any future projects on either parcel will need to undergo a separate environmental determination.

After brief comments by Agents James Ronco and Vance Ricks, the hearing was opened to the public, including those who were in opposition to the project. Comments included, but were not limited to, the project being piecemealed, its inconsistency with the General Plan, and inadequate review of previous contamination on the project site. Following public comment, Staff provided clarification of the proposed subdivision application that had been submitted for 11 parcels. A soils report regarding toxic substances was submitted but is still under review by both the Department of Environmental Health and the State Water Board. The Coastal Permit Administrator noted that the project was not resulting in a subdivision and any subdivision or development application would be treated separately, but that any code violations should be addressed prior to recordation of the Boundary Line Adjustment. As such, Condition number 9 was added stating that "prior to completion of the Boundary Line Adjustment B_2017-0043, the owner/applicant shall fully address all code violations currently associated with the property and it shall be demonstrated to the satisfaction of Planning and Building Services prior to the new deeds being recorded". The above noted condition from Subdivision Committee was also added as Condition number 10 and the project was approved by the Coastal Permit Administrator.

RECOMMENDED MOTION

The sole basis of the appeal, as specifically provided by counsel for the appellant, is that Boundary Line Adjustment B_2017-0043 is not actually a boundary line adjustment because it will result in the creation of additional parcels. As reviewed above, Mendocino County Code Section 17-17.5, paragraph (H), specifically allows for the Subdivision Committee to add requirements to insure that the boundary line adjustment shall not have the effect of creating a new lot or parcel. In ruling on this appeal, the Board of Supervisors has the ability to modify the action of the Coastal Permit Administrator. Consistent with the above analysis, staff recommends the following motion on the appeal:

Deny the appeal of the Coastal Permit Administrator's approval of Boundary Line Adjustment (B_2017-0043), located near Cleone to align parcel boundaries with Coastal Zone Boundary and remove split designations, Parcel "A" (APN: 069-320-01) would increase from 10.85 to 11.35± acres, and parcel "B"

(APN: 069-320-02) would decrease from 10.85 to 10.35± acres, located at 32800 & 32700 Nameless Lane, Fort Bragg; and modify the approval to include the requirement that the applicant prepare, or have prepared, partial reconveyances and/or modified deeds of trust, as applicable, in substantial compliance with the approved boundary line adjustment, and arrange for their concurrent recording with the documents that effectuate the boundary line adjustment.

ATTACHMENTS:

- A. Application (pages 1 – 4)
- B. Revised Application (pages 5 – 7)
- C. Staff Report (pages 8 – 15)
- D. Staff Report Attachments (pages 16 – 32)
- E. Public Comments (pages 33 – 55)
- F. Public Comment - Vannucci Momsen Morrow (pages 56 – 189)
- G. Coastal Permit Administrator Action Sheet (page 190)
- H. Staff Memorandum to Coastal Permit Administrator (page 191)
- I. Appeal Form