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VIA EMAIL AND
PERSONAL DELIVERY

Ignacio Gonzales
Coastal Permit Administrator
County of Mendocino Planning and Building Services
860 N Bush St.
Ukiah, CA 95482
(pbs@mendocinocounty.org)

Re: Case Nos.: B 2018-0068 & B 2019-0054
Hearing Date and Time: September 14, 2023 @ 11:00 AM
Owners: William & Tona Moores

Dear Coastal Permit Administrator Gonzales:

I. Introduction

I represent William and Tona Moores in relation to the above referenced matter. As the staff report in this matter correctly notes, the County of Mendocino approved two boundary line adjustments in the above referenced cases around June 13, 2019 and June 11, 2020 that benefitted by clients. These boundary line adjustments were finalized around November 21, 2019 and August 18, 2020, respectively

Roughly four years and three months after the first of these two boundary line adjustments were finalized, the County now seeks to unlawfully revoke the boundary line adjustments without right. In addition to the fact that the County lacks any legal or factual predicate for revoking said boundary line adjustments, the County is estopped from any revocation based upon the Moores having relied to their detriment upon their vested rights flowing from the County's approval. 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 and must 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 Legal And Factual Foundation for Any Revocation

The pertinent staff report relies upon Mendocino County Code section 20.536.035 to suggest that the County may 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 the Board of Supervisors 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 a boundary line adjustment (though it does not), there is an absence of fraud to provide a factual predicate for any revocation. Fraud is ordinarily 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.)

The elements of fraud are absent multiple times over. The County has done nothing to show that Mr. Moores represented as a matter of 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 strong evidence that the Moores themselves were equally unknowing of what an arcane legal opinion did or did not say. And finally, any specter of fraud is 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. In sum, there is no fraud, nor has there ever been any fraud.

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 ago, 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.

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

IV. Any Revocation of the Boundary Line Adjustment 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.)

Here, a revocation of the pertinent boundary line adjustments by the County would constitute a taking. Moreover, it would be an impermissible taking because it would not be for a "public use" as is constitutionally required. 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. (*See, e.g.,* Code Civ. Proc. § 1240.030 *et seq.* & Gov. Code § 7267.1 *et seq.*)

Even if it were a permissible taking—and effectuated in a manner required by law—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 that the County will need to reimburse them for. Insofar as the County already has a structural deficit of roughly ten million dollars a year, this is a war of choice and adventure that the County simply cannot afford.

V. Conclusion

For the reasons stated above, William and Tona Moores respectfully pray that the Coastal Permit Administrator deny the requested revocation in full and with prejudice.

Respectfully submitted,

Colin W. Morrow
Attorney for William & Tona Moores