

# Attachment A

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# RESOLUTION

## Before the Board of Supervisors in and for the County of Monterey, State of California

In the matter of the application of:

**APPEAL OF INTERPRETATION –  
PRINCIPALLY PERMITTED VITICULTURE  
USES IN A RESIDENTIAL ZONE  
RESOLUTION NO. \_\_\_\_\_**

Resolution by the Monterey County Board of  
Supervisors:

- 1) Denying an Appeal of the July 26, 2017  
Planning Commission Interpretation relative to  
allowed uses for a commercial vineyard located  
in a residential zone filed by Hilltop Ranch LLC  
(Richard Lumpkin), represented by John Bridges  
of Fenton & Keller; and
- 2) Upholding the July 26, 2017 Planning  
Commission interpretation relative to allowed  
uses for a commercial vineyard located in a  
residential zone;
- 3) Finding that interpreting existing code is an  
administrative activity that does not result in  
direct or indirect physical change in the  
environment, which is Statutorily exempt per  
CEQA Guidelines section 15378(b)(5); and
- 4) Approving the request by Hilltop Ranch to  
waive the appeal fee.

**WHEREAS**, Monterey County Code (MCC) Chapter 21.82 establishes a process whereby a person may make a written request for a written administrative interpretation of the County Zoning ordinance (Title 21) by the Director of Planning and a person aggrieved by that administrative interpretation may appeal the interpretation to the Planning Commission, which interpretation is appealable to the Board of Supervisors; and

**WHEREAS**, Monterey County Code Chapter 2.30 authorizes the Chief of Planning (formerly known as the Director of Planning) to “*provide administrative interpretations of County zoning ordinance*”; and

**WHEREAS**, the Director of the Resource Management Agency (RMA) has authority to issue such interpretations because Chapter 2.27 of the Monterey County Code provides that the Director of the Resource Management Agency “*shall direct and oversee the operations of the Resource Management Agency*” and the RMA was “*created as a comprehensive local agency to administer, coordinate, and oversee the development and implementation of policies and regulations concerning land use planning, building inspection, code compliance, public works, and general services*”; and

**WHEREAS**, by letter dated March 16, 2017 (received March 17, 2017), Mr. John Bridges, on behalf of Hilltop Ranch and Vineyard (62 E. Carmel Valley Road; APNs 197-011-012, 013, 014, & 015), requested an Administrative Interpretation pursuant to section 21.82.040.B of the

Monterey County Code regarding whether activities described in his letter are “within the scope and definition of viticulture as an allowed use” (Principally Permitted Uses) in the Low Density Residential zoning district under Section 21.14.030 of the Monterey County Code; and

**WHEREAS**, on April 11, 2017, the RMA Director issued a written response (“Administrative Interpretation”) regarding Principally Permitted Viticulture Use under section 21.14.030, subject to an appeal period ending 5:00 pm on April 21, 2017; and

**WHEREAS**, by email dated May 10, 2017, Mr. Tony Lombardo requested clarification of several points of the April 11<sup>th</sup> interpretation by the Director and indicated it was a request for interpretation with right of appeal; and

**WHEREAS**, on May 16, 2017, the Director issued a written response as an “Addendum to April 11<sup>th</sup> letter” regarding Principally Permitted Viticulture Use under section 21.14.030.N, subject to an appeal period ending 5:00 pm on May 26, 2017; and

**WHEREAS**, on May 26, 2017, Tony Lombardo representing Dean Hatfield and Karolyn Stone on behalf of Nancy Burnett, Bryan Jaeger, Dock and Lynda Williams, David Berta, Liana Olson, Edward and Peggy Dickson, Edward Mellinger, and Pamela Hopkins filed an appeal of the Administrative Interpretation as set forth in the Director’s letters of April 11 and May 16, 2017; and

**WHEREAS**, on May 26, 2017, Molly Erickson representing Carmel Valley Association (CVA) filed an appeal of the May 16 and April 11, 2017 letters and a February 11, 2016 email; and

**WHEREAS**, a fee of \$2678.08 to file an appeal of administrative interpretation in accordance with the duly adopted fee schedule was paid by CVA with a request to waive the fee; and

**WHEREAS**, pursuant to the fee waiver policy adopted by the Board of Supervisors, the Director of Planning has authority to waive fees if certain criteria are met, and the Planning Commission has authority to consider all requests for fee waivers not meeting the criteria and to consider appeals of the Director’s decisions on fee waiver requests; and

**WHEREAS**, the Director determined that CVA’s request for fee waiver did not fit within the categories for which the Director has authority to waive fees, and as such, the request was denied, and the appellants paid the fees and requested the Planning Commission grant a waiver of the fees; and

**WHEREAS**, on July 11, 2017, at least 10 days prior to the public hearing on the appeals of the Administrative Interpretation, notices of the public hearing were published in the *Monterey County Weekly* and were mailed to the property owners within 300 feet of the subject property as well as interested parties; and

**WHEREAS**, the appeals of the Administrative Interpretation came on for public hearing before the Monterey County Planning Commission on July 26, 2017, where all persons had an opportunity to be heard; and

**WHEREAS**, the Planning Commission granted the appeals, waived the appeal fee paid by CVA, and reversed the Director’s Administrative Interpretation (April 11, 2017 as clarified on May 16,

2017) relative to uses allowed as part of a commercial vineyard (viticulture) located in the inland Low Density Residential zone; and

WHEREAS, pursuant to Section 21.82.050.D of the Monterey County Code, the Planning Commission's decision may be appealed to the Board of Supervisors pursuant to Chapter 21.80 of the Monterey County Code, and such hearing is de novo pursuant to section 21.80.090.B of the Monterey County Code; and

**WHEREAS**, on August 10, 2017, Hilltop Ranch LLC (Richard Lumpkin), represented by John Bridges of Fenton & Keller, timely filed an appeal of the July 26, 2017 Planning Commission decision and, on or about August 14, 2017, paid \$2678.08 to file the appeal; and

**WHEREAS**, Section 21.80.090.E requires appeals to be heard within 60 days after receiving a timely appeal, which was October 9, 2017; however, appellant and all interested parties agreed to move the hearing date to November 14, 2017; and

**WHEREAS**, on November 4, 2017, at least 10 days prior to the public hearing on the appeal of the July 26, 2017 Planning Commission Interpretation, notices of the public hearing were published in the *Salinas Californian* and were mailed to the property owners within 300 feet of the subject property as well as interested parties; and

**WHEREAS**, the appeal of the July 26, 2017 Planning Commission Interpretation came on for public hearing before the Monterey County Board of Supervisors on November 14, 2017, where all persons had an opportunity to be heard.

**NOW, THEREFORE, BE IT RESOLVED**, the Monterey County Board of Supervisors, having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, finds and decides as follows:

### **FINDINGS**

- 1) The issue raised by the appeal is interpretation of "viticulture" under section 21.14.030.N of the Monterey County Code, specifically the scope of a commercial vineyard as an allowed use, without a discretionary permit, in the non-coastal Low Density Residential zone. Chapter 21.14 of Title 21 (inland zoning ordinance) contains the regulations for Low Density Residential (LDR) zoning districts. Section 21.14.030 lists the "uses allowed," i.e., uses allowed without the requirement of a discretionary permit. Uses listed as "Uses Allowed" include "viticulture" (Section 21.14.030.N) and "stands for sale of agricultural products" (Section 21.14.030.M) Section 21.14.030.O allows "Other uses of a similar character, density and intensity to those listed in this Section." The issue in the appeal is the allowable scope of a commercial vineyard in a residential zone under the allowed use category.
- 2) Addressing Appellant's procedural contention first, the Board finds that it has authority to render an interpretation on the whole of the issue. Appellant contends that the Planning Commission's decision was a "nullity to the extent it purports to undermine the finality of the April 11, 2017 interpretation" because an appeal of that interpretation was not timely filed. The Board of Supervisors finds that the Planning Commission was not limited to the questions addressed in the May 16 letter and may reach the April 11 letter, notwithstanding that an appeal of the April 11 letter was not timely filed. Pursuant to section 21.82.050 of Chapter 21.82 of the MCC, "the Planning Commission may, after its

consideration of the administrative interpretation, affirm, reverse, or modify the interpretation” and provide the reasons therefor. Accordingly, the Commission had authority to interpret the zoning ordinance and was not limited to specific points in the May 16 letter. Moreover, the May 16 letter clarifies the April 11 letters, thus incorporating the April 11 opinion and making them inseparable, as they raise the same issue for interpretation. Additionally, the Board need not determine whether the Planning Commission decision was a “nullity” because the appeal sets aside the Planning Commission decision. (MCC, section 21.80.030.A.) The Board’s hearing is de novo, per Section 21.80.090.B of the Monterey County Code, made applicable by Section 21.82.050.D of the Monterey County Code. Thus, appeal squarely presents the issue of the scope of the uses allowed without a permit under “viticulture” in the inland Low Density Residential zone, regardless of which letter is being appealed. . Appellant’s argument, that the Board must defer to the Resource Management Agency Director’s April 11 interpretation, misunderstands the role of the Board of Supervisors, who has the ultimate authority within the County to interpret and apply the County Code, and misunderstands the distinction between an interpretation and a permit, the latter of which provides for finality. Moreover, functionally, the Board’s de novo decision supersedes both the May 16 and April 11 letters, because the May 16 letter clarified the April 11 letter, thus incorporating the April 11 opinion and making the May 16 and April 11 inseparable, as they raise the same issue for interpretation.

- 3) The Board of Supervisors upholds the Planning Commission Interpretation of uses allowed under “viticulture” under section 21.14.030.N as follows:
  - a. General Plan Policy LU-2.34 characterizes Low Density Residential (LDR) areas as “appropriate” for “*limited agricultural activities that are incidental and subordinate to the residential use.*” The uses allowed per the Administrative Interpretation are not “incidental and subordinate” to the residential use.
  - b. Monterey County Code Section 21.14.010 states that the purpose of the Low Density Residential (LDR) zoning district is to “*provide a district to accommodate low density and intensity uses and to insure that allowable land uses are compatible in the area.*” Large-scale marketing events are not compatible in a residential neighborhood without the public permit process that would enable environmental review, public hearing, and conditions of approval if the use is permitted.
  - c. Monterey County Code Section 21.14.030 provides a list of “Uses Allowed” in the non-coastal LDR zone, including but not limited to viticulture, but viticulture does not include large-scale marketing events.
  - d. Large-scale marketing events are not a normal part of a vineyard (viticulture) in a residential zone. Such uses do not qualify as “*limited agricultural activities that are incidental and subordinate to the residential use.*” Impacts from this type of use include traffic and noise. Such uses should be vetted through a permit process because neighbors would have notice and opportunity to be heard, the proposed use would be subject to environmental review as part of the permit process, and the County decision-maker would weigh benefits and impacts and impose appropriate conditions of approval. The term “large scale marketing events” does not refer to “special events” as Appellant contends but rather refers to vineyard activities that may have up to 75 invitees, as referenced in the Director’s April 11 and May 16, 2017 letters.
  - e. The Planning Commission found that, if a permit is applied for, events that have taken place under the Administrative Interpretation should not be considered part

of the baseline use. Appellant challenges this finding as unilaterally declaring a CEQA baseline. The CEQA baseline for a permit will be determined based on the particular facts and circumstances of the particular project application. The point for purposes of this appeal is that under the Commission's interpretation, which did not consider large scale marketing activities to qualify as an allowed use, such activities would not become part of the CEQA baseline if and when applicants apply for discretionary permits to allow for such activities.

- 4) A Fee Waiver is appropriate in this case because the appeal conferred a broader public benefit, beyond a specific property or the specific appellant, relative to vineyards in the LDR zone and relative to the process in the County Code for administrative interpretations.
- 5) This interpretation is not a project under the California Environmental Quality Act (CEQA) pursuant to section 15378(b)(5) of the CEQA Guidelines because it is an interpretation of existing regulations, not a change in regulations nor grant of an entitlement. As such, it is an administrative activity that will not result in a direct or indirect physical change in the environment.

### DECISION

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, based on the above findings and evidence, the Monterey County Board of Supervisors does hereby:

- 1) Deny the Appeal by Hilltop Ranch of the July 26, 2017 Planning Commission Interpretation relative to allowed uses for a commercial vineyard located in a residential zone; and
- 2) Uphold the July 26, 2017 Planning Commission interpretation relative to allowed uses for a commercial vineyard located in a residential zone;
- 3) Find that interpreting existing code, not approving or changing anything, is an administrative activity that does not result in direct or indirect physical change in the environment, which is Statutorily exempt per CEQA Guidelines section 15378(b)(5); and
- 4) Approve the request by Hilltop Ranch to waive the appeal fee and authorize refund of the appeal fee.

**PASSED AND ADOPTED** upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_ and carried this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the following vote, to wit:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book \_\_\_\_\_, for the meeting on \_\_\_\_\_.

Dated:  
File Number:

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By: \_\_\_\_\_  
Deputy

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